United States Court of Appeals

for the Second Circuit

APPELLEE'S APPENDIX

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77-2106

Docket No. ~~73-1725~~

Wyatt

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IN THE
United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,
Appellee,

—*vs.*—

LOUIS CHARLES KING, JR.,
JAMES VINCENT TALERICO,
JACK ZOGBY,
CARL J. MAZZA,
Appellants.

**On appeal from the United States District Court,
Northern District of New York**

APPENDIX OF UNITED STATES
(Vol. I — Page 1 to 558).

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TABLE OF CONTENTS

Page
Case and Exceptions 1*/
Motion for Hearing re: Albert J. Marrone 4
Motion to Sequester the Jury 10

Hearing re: Albert J. Marrone:

Motion to Dismiss 51, 59
Argument on Motion 60, 85
Request for Non-Public Trial 151

Trial:

Opening Statement by Mr. Brindisi (King's Attorney) 165
Opening Statement by Mr. Manganelli (Talerico's Attorney) 176
Opening Statement by Mr. Scholl (Zogby's Attorney) 181
Opening Statement by Mr. Longeretta (Mazza's Attorney) . 184
Zogby's Motion to Suppress 208
Offer of Proof on Impeaching Mr. Sackman 352
Transcript of Exhibits:
7. Sackman-Talerico at Geraci's, 11-11-72 607
8. Sackman-King, 11-11-72 618
9. Sackman-Talerico Tel. Call, 11-11-72 627
10. Sackman-King, 11-16-72 629
11. Sackman-Talerico Tel. Call, 11-30-72 646
12. Sackman-King Tel. Call, 12-1-72 665

---

*/ The appendix pages are numbered as they are in the original record transcript and are consecutive but will not be continuous because the appendix reproduces only the pertinent part of the orignal record transcript.

Page
13. Sackman-King-Mazza, 11-18-72 670
14. Proof of Ownership of Zogby's Automobile 690
Motions After Weekend Incident 657
Motions for Judgment of Acquittal 693, 865
Further Motions to Voir Dire Jury 744
Motion to Move Trial to Hospital 814
Bail Motions 818
Court Viewing Defendant King's Physical Appearance 831
Motion to Continue Trial at Hospital 860
Excerpts from Summation of Mr. Brindisi (King's Attorney) 904
Request of the Jury 1004
Verdict 1038
Motion for Judgment of Acquittal and for a New Trial 1043
Court's Further Rulings 1045, 1074
Hearing on Weekend Incident and King's Absence 1069
Sentencing of Carl J. Mazza 1092
Sentencing of Jack Zogby 1096
Sentencing of James Vincent Talerico 1099
Motion for Bail Pending Appeal 1105
Sentencing of Louis Charles King 1110
Zogby Motion for Severance 1126
Government's Response 1128
Court's Order Denying Severance 1130

Page

Hearing re: Albert J. Marrone.

WITNESSES FOR THE DEFENDANTS:

John Ryan —
- Direct by Mr. Brindisi 12
- Examined by Mr. Longeretta 33, 37
- Examined by Mr. Scholl 35
- Examined by Mr. Manganelli 35
- Cross by Mr. Welch 36

Robert J. Kolevar —
- Direct by Mr. Brindisi 38
- Examined by Mr. Longeretta 42
- Examined by Mr. Manganelli 42
- Examined by Mr. Scholl 44
- Cross by Mr. Welch 44

Albert J. Marrone —
- Direct by Mr. Brindisi 45
- Examined by Mr. Longeretta 58

Hearing re: Albert J. Marrone.

WITNESS FOR THE DEFENDANT MAZZA:

John C. Ryan —
- Recalled Direct by Mr. Longeretta 108
- Examined by Mr. Brindisi 113

Trial.

WITNESSES FOR THE GOVERNMENT:

J. Schuyler Sackman —
- Direct by Mr. Welch 189
- Voir Dire by Mr. Scholl 209
- Recalled Direct by Mr. Welch 257
- Cross by Mr. Brindisi 322, 357, 542
- Cross by Mr. Manganelli 431
- Cross by Mr. Scholl 460
- Cross by Mr. Longeretta 467, 520
- Redirect by Mr. Welch 553
- Recross by Mr. Brindisi 557

Page

Robert J. Kolevar —

Recalled Direct by Mr. Welch 245, 580
Cross by Mr. Scholl 248
Recalled Cross by Mr. Longeretta 686

James F. Savage, Jr. —

Direct by Mr. Welch 560
Cross by Mr. Brindisi 564
Cross by Mr. Manganelli 565
Cross by Mr. Scholl 566
Cross by Mr. Longeretta 566

John C. Ryan —

Recalled Direct by Mr. Welch 569
Cross by Mr. Brindisi 573

Robert S. Rea —

Direct by Mr. Welch 574
Cross by Mr. Brindisi 578
Cross by Mr. Longeretta 579

Edgar A. Bergholtz —

Direct by Mr. Welch 1071

Trial.

WITNESSES FOR THE DEFENDANT KING:

Robert J. Kolevar —

Direct by Mr. Brindisi 694
Cross by Mr. Scholl 704

Louis Charles King —

Direct by Mr. Brindisi 834
Cross by Mr. Welch 857

Page

Trial.

WITNESS FOR THE DEFENDANT TALERICO:

James Vincent Talerico —
- Direct by Mr. Manganelli 705
- Cross by Mr. Welch 734
- Cross by Mr. Brindisi 738
- Cross by Mr. Scholl 740
- Cross by Mr. Longeretta 741

Trial.

WITNESSES FOR THE DEFENDANT ZOGBY:

John C. Ryan —
- Direct by Mr. Scholl 228
- Cross by Mr. Welch 242
- Redirect by Mr. Scholl 244

Jack Zogby —
- Direct by Mr. Scholl 745
- Cross by Mr. Brindisi 756
- Cross by Mr. Welch 757

Trial.

WITNESS FOR THE DEFENDANT MAZZA:

Carl J. Mazza —
- Direct by Mr. Longeretta 781
- Cross by Mr. Brindisi 798
- Redirect by Mr. Longeretta 805

Trial.

WITNESS FOR THE COURT:

Dr. John Bradford Millet —
- Examined by the Court 823

Index to Government's Exhibits:

Ex. No.	Description	Pages Marked	Pages Received
1.	Envelope	197	199
2.	Microphone	270	
3.	Tape Recorder	270	
4.	Tape Recorder	276	
5.	Section 5-501(1) N.Y.S. General Obligations Law	559	
6.	Section 5-511(1) N.Y.S. General Obligations Law	559	
7.	Tape, Sackman-Talerico at Geraci's, 11-11-72	604	605
8.	Tape, Sackman-King, 11-11-72	604	605
9.	Tape, Sackman-Talerico, Tel. Call, 11-11-72	604	605
10.	Tape, Sackman-King, 11-16-72	604	605
11.	Tape, Sackman-Talerico, Tel. Call, 11-30-72	604	605
12.	Tape, Sackman-King, Tel. Call, 12-1-72	604	605
13.	Tape, Sackman-King-Mazza, 11-18-72	604	605
14.	Certification of Ownership of Auto	689	690
15.	Records	691	
16.	Records	691	
17.	Records	691	
18.	Records	691	

Index to Court's Exhibits:

Ex. No.	Description	Pages Marked	Pages Received
3501.	Report	20	
1.	Letter	156	
1.	Note	1004	

Index to Defendant Zogby's Exhibits:

Ex. No.	Description	Pages Marked	Pages Received
Z-1.	Box	224	225
Z-2.	Report	236	
Z-3.	Agent Kolevar's Report	237	
Z-4.	Photograph	237	

Index to Defendant King's Exhibits:

Ex. No.	Description	Pages Marked	Pages Received
K-1.	Book	838	839

CASE AND EXCEPTIONS.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

-against- :

LOUI CHARLES KING, ALBERT J. MARRONE, : 72-CR-283
JAME VINCENT TALERICO, JACK ZOGBY
and CARL J. MAZZA, :

Defendants. :

The trial in the above-entitled matter was had pursuant to notice at the United States District Court in and for the Northern District of New York, at Utica, New York, commencing on February 20th, 1973, before HON. LLOYD F. MAC MAHON, United States District Judge sitting by designation, and a Jury.

* * * * *

Discussion.

The following proceedings took place in Chambers with all attorneys present:

THE COURT: What is the problem?

MR. BRINDISI: Your Honor, I think under the rules, and it is discretionary with the court, we ask for additional peremptory challenges. It is my understanding the defendants jointly have ten challanges and the government has six. We want to make an application to the court for more challanges, if it is permissible.

THE COURT: Is there any reason why you need more?

MR. BRINDISI: We feel there is a possibility that the defendants may have a little different defense among themselves, and it is not sort of a joint type defense. And for that reason we feel that we should be given some extra challanges.

THE COURT: All right. I will give you two extra. You still exercise them jointly.

MR. BRINDISI: Right. One other thing.

THE COURT: And I say don't exercise them just for the sake of exercising.

MR. BRINDISI: I understand.

I request Mr. Ryan, also the F.B.I., who is seated at counsel table, he has the pistol on him which is observable to view anyway, and I think it is highly prejudicial.

THE COURT: Get rid of the pistol. I don't want guns in the court room. Get rid of it.

MR. WELCH: He will.

MR. BRINDISI: One other thing. We made a motion for discovery before Judge Port, and he ordered the United States Attorney under a continuing type motion to make a disclosure, whatever disclosure had to be made, and it is our understanding one of the co-defendants, Albert Marrone, had turned informer and has been cooperating with the United States Attorney's Office, and we would like to know whether or not any information has been given to the United States Attorney's Office by the informer, who was also a co-defendant.

THE COURT: What was Judge Port's ruling?

MR. WELCH: Judge Port's ruling was that the government should disclose to the defense the name of any co-conspirator the government intends to call at the trial.

MR. BRINDISI: I think it was also informers and my understanding of his order was---

THE COURT: Is there a written order?

MR. WELCH: Yes Your Honor. (Hands document to the Court).

THE COURT: Which section are you claiming, Mr. Brindisi, so I can rule on it.

MR. BRINDISI: Your Honor, it is not-- I don't believe it is something that actually pinpointed in the order. It was something Judge Port indicated from the bench that the government was to disclose any exculpatory material.

THE COURT: If you have exculpatory material you are obliged to disclose it.

MR. WELCH: We do not have any exculpatory information.

THE COURT: If you do, you are obliged to disclose it.

MR. WELCH: Yes sir.

MR. BRINDISI: There were two cases recently decided in which, and this is a little different situation we have here, where co-defendants were tried together and one was an informer throughout the trial, and the government failed to disclose that to the defendants, and a new trial was ordered on behalf of the defendant later convicted.

I feel that this is the same type situation, where we have an informer who is a co-defendant giving information pertaining to this particular case, even though we are not being confronted by witnesses against us. And if he is informing we would like to know so we won't call him during the course of this trial as a witness.

THE COURT: I couldn't possibly rule on whether anyone should be called and produced by the government as a witness until I hear what the story is. I can't rule on that in a vacuum. You are not entitled to ascertain the identity of any informer unless it is necessary.

MR. BRINDISI: I also would like to bring to the Court's attention that the government could be obtaining evidence in this case by use of the evidence of a co-defendant, and they can be using information which he gives them to impede the defense in this case.

THE COURT: I need something more specific than the way of a showing. I can't rule on it. Your application is too vague at this point.

MR. BRINDISI: Is there a possibility that the government can state that the government-- if the informer is in fact informing with regard to this case.

THE COURT: I will leave that up to the government.

MR. WELCH: The government's position is we would not make such a statement, but we would like to make the statement that if Mr. Marrone is in fact informing, that Mr. Marrone's case has been severed from this trial, and it is up to them to make a record that he is an informer.

THE COURT: Mr. Marrone is not going to be tried with your defendants.

MR. BRINDISI: That's right.

THE COURT. For that reason you should

not have any conferences with him either alone in his presence or in the presence of his counsel.

MR. BRINDISI: We have no intention of having conferences with him.

THE COURT: Have you had a conference up to this time?

MR. BRINDISI: We have Your Honor. He has sent for defense counsel while incarcerated in the Oneida County Jail and we talked extensively about the defense in this case at a time when he was a co-defendant, and we discussed it extensively with his attorney, and with this in the background now that a severance has been granted, we feel that our defense is known to the co-defendant and that our defense has been given to the government.

THE COURT: What do you say about that?

MR. WELCH: I can state for the record that Mr. Marrone has not revealed that to me or to any of my agents of the Federal Bureau of Investigation, to my knowledge, any items concerning the defense of the defendants.

THE COURT: Do you say that the Court should conduct a hearing on it?

MR. BRINDISI: Yes. I think it is important.

THE COURT: I will conduct it here in Chambers. Who do you say should be called as a witness?

MR. BRINDISI: I think we should find it out from Mr. Ryan and from the U.S. Attorney himself handling this matter.

THE COURT: All right. We will proceed. Call your witness.

MR. BRINDISI: I would like to call Jack Ryan.

MR. RYAN: Do you want me to get all my papers on this right now?

THE COURT: Yes.

MR. RYAN: I will come right back.

(Mr. Ryan leaves the court's chambers).

MR. WELCH: Your Honor, while we are waiting for Mr. Ryan's return, the government would like to inquire if we were ever to call Mr. Marrone, to avoid a delay, we should request the Marshal to bring him here. He is in Oneida County Jail.

THE COURT: You better get him here.

MR. BRINDISI: Yes. I would like to have the government inform us of any agents' names who talked with him.

THE COURT: Yes. I want every agent who worked on this case available and all reports regarding anything the defendants said in the presence of Mr. Marrone since the indictment in this case, or during the investigation leading up to it, at least for the court's inspection in camera.

MR. WELCH: In addition Your Honor, I have one request, I would like to make to the court in the form of a motion, to have a voir dire put to the jury. I show to Your Honor a memorandum of law which might be helpful, if Your Honor entertains the motion. Basically it is a motion to sequester the jury and along with that, if Your Honor grants that motion, to ask the prospective jurymen whether or not this sequestion would impose any hardship on them so that they wouldn't be able to serve.

The basis of my motion is one to protect the rights of these defendants to a fair trial, in that the arrest of these defendants and prior trial motions have had publicity in the local news here and the radio, and it is anticipated in view of the request I received at my office with regard to the starting date of this trial, that they will give this trial daily coverage.

THE COURT: They are entitled to report anything that occurs in court.

MR. WELCH: That's right. In addition to that, in the People vs. Hansen (?) tried in Supreme Court, the jurors received hate mail directly against the defendants, resulting in a mistrial. To avoid this publicity influencing the jurors and, two, hate mail being sent to the jurors and if not causing a mistrial being detrimental to these defendants---

THE COURT: How long will this case take?

MR. BRINDISI: It will be over a week. What happened in the other case, the newspaper reporter published the list of the jurors in the newspapers and somehow or other mail was sent to the jurors and at the second trial, when it was held, in the same case, the judge ordered that no names be published.

THE COURT: I direct to Mr. Evans not to publish the names of the jurors in this case or give it to any newspaper reporters.

MR. WELCH: It certainly would avoid any possibility of a mistrial on those grounds.

THE COURT: I will grant the motion to sequester the jury.

MR. WELCH: All right. Thank you, Your Honor.

THE COURT: All right, let's get going.

JOHN RYAN,

called as a witness in behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRINDISI:

Q Mr. Ryan it is my understanding you are a member of the Federal Bureau of Investigation?

A That's right.

Q Has there been a time or did there come a time in your official duties when you had contact with Albert Marrone, a co-defendant, presently severed in this case, incarcerated at the Oneida County Jail?

A Yes I did.

Q Have you had discussions with him concerning his becoming an informer in regards to matters in dispute?

THE COURT: I think the question is too broad. It seems to me all you are entitled to, and I am wrong I would be glad to have the law, is to find if there was a supplying of defense tactics. If you want to take it further than that, you'll have to show me how you are entitled to it.

BY MR. BRINDISI:

Q Have you had conferences with Albert Marrone since the handing down of the indictment in this present case?

A Yes.

Q Can you tell me the first time you had a conference with him?

A I don't recall the date. It was afterwards, shortly after, within one or two weeks.

Q After this indictment was handed down?

A That's right.

Q Did this take place at the Oneida County Jail?

A Yes sir.

Q Can you tell us the nature of the discussion that you had with him at that particular time?

MR. WELCH: Objection.

THE COURT: Sustained

BY MR. BRINDISI:

Q Did you discuss with Mr. Marrone--- Mr. Marrone was also a defendant in this case when you talked to him at the Oneida County Jail?

A Yes sir.

Q Did you discuss with him any matters pertaining to this particular indictment?

A Yes sir.

Q Can you tell us what you discussed with him?

A The prior discussion concerned his claim to me that he was innocent in this particular case and in justice that he should be left out of it. He claimed the money involved in this case was front money,-- that was his term-- and not shylock money, as far as he was concerned. He admitted to me he gave the money to Sackman as a favor for King.

THE COURT: Now this is not what I am concerned with.

THE WITNESS: Yes sir.

THE COURT: What I am concerned with is whether there were conferences among the defendants where this defendant was present so that he would know the strategy of the defense in this case. I am not worried if he wants to spill his guts as a co-defendant or what he wants to do as a co-defendant, he has that right. You have no right to inquire into that, but whether he has deprived you of a fair trial is the only question.

BY MR. BRINDISI:

Q Did he discuss with you having conferences with the various attorneys handling matters for the other defendants in this case?

A Yes.

Q What did he say to you about that?

THE COURT: When?

BY MR. BRINDISI:

Q And when?

A There were two conferences at the jail in which he told me basically the same thing, and I can't recall at which time which was said.

Q What did he say?

A That there were, as I recall, five items of strategy he pointed out to me. One item he mentioned that the witness would be aware of the Bible, the fact he would be sworn in on the wrong Bible and told that the Bible wouldn't be used.

Q Who told you the Bible wouldn't be used?

A Mr. Welch.

Q What was the next defense strategy?

A That there was an attempt to bribe Judge Foley in Albany by Mr. Brindisi.

Q By me?

A Yes. That Joe Falcone is the contract to reach Judge Foley, and that Judge Foley would grant defendant King a severance in the case.

That there is an attempt to kill the witness Sackman and that there was an attempt to contact prospective jurors, for bribing jurors.

Q What else did he tell you about the strategy of the attorneys in this action?

A This is all I recall.

Q And he told you this on two different occasions?

A Yes.

Q At any time when you were talking with him, was he cooperative with you at that time, during the conversations?

MR. WELCH: Objection.

THE COURT: Sustained.

MR. BRINDISI: Your Honor, the reason for that, I feel that if he was cooperative with the F.B.I., at that time, then there may have been inducements on his part to have the defense counsel go up to the jail---

THE COURT: I don't see that it matters whether there was inducement or not.

BY MR. BRINDISI:

Q What else was said to Mr. Marrone by you concerning this case?

A I am sorry, concerning what?

Q The trial of this matter.

A I would say he talked quite a bit about his own involvement.

Q In this case?

A Yes.

Q Did he tell you of the involvements of the other defendants in this matter?

THE COURT: Sustained. I don't care.

BY MR. BRINDISI:

Q Mr. Ryan, did you make any written notes or memoranda concerning your discussions with Mr. Marrone at the Oneida County Jail?

A Yes.

Q May I see those please?

A I don't have them.

MR. BRINDISI: May I see them?

MR. WELCH: We object to Mr. Brindisi seeing them.

THE COURT: I want to see them.

MR. WELCH: I will present them to Your Honor for inspection.

THE COURT: Now.

THE WITNESS: I would say they are in Albany now.

MR. WELCH: Would Your Honor indulge me?

THE COURT: All reports relating to this case should be here in Utica in the court room. The court can order the production if necessary.

(At this point Mr. Welch left the Chambers with the witness and then returned).

THE COURT: I want this record sealed.

MR. WELCH: Your Honor, no reports were given to me nor did I ask for any reports because the nature of the information was useless. Mr. Ryan is sending someone to bring them here immediately. They are at the F.B.I. Office, five blocks south of here.

THE COURT: All right. I want all F.B.I. reports concerning this case in this court room, so we can see them if we need to.

MR. BRINDISI: Your Honor, if there are any other agents maybe we can have them all produced.

THE COURT: Any other agents who have any contact with Marrone is to be here, since the indictment. Is that clear? Do you want to take his testimony?

MR. BRINDISI: If Mr. Welch makes those statements for the record, I have no desire.

THE COURT: He made them for the record. Any other people that you want?

MR. BRINDISI: I don't believe so. Just the agents and Mr. Marrone I guess.

MR. WELCH: Your Honor, I would request in view of the nature of the allegations brought forth from Mr. Ryan, Your Honor will fill the transcript of this hearing.

THE COURT: I already have. Go out and see what you can do.

(At this point a short recess was taken after which the hearing in chambers continued at 11:21 A.M.)

THE COURT: All right.

MR. WELCH: Your Honor, for the record, Mr. Ryan has obtained a carbon copy of his report, but that carbon copy contains information concerning informers in general and has a specific section dealing with Mr. Marrone in regard to this case. If I could introduce it to Your Honor.

THE COURT: Mark it and I will examine it.

MR. WELCH: We would like to refrain from putting it in the record.

THE COURT: I must mark it. Mark it. Call it 3501.

(Document marked as Court's Exhibit 3501).

MR. WELCH: Will Your Honor direct that it be returned to Mr. Ryan?

THE COURT: I will direct what I want to direct. Please quit running my court.

MR. WELCH: I only indicate that the contents contained in there is a matter of life or death for some of these people.

THE COURT: Please have in mind that I have my function. Don't tell me how to perform my duty. I was performing it when you were in your cradle.

I just ask you the question, is the series that you use, when you use the word series, does that refer to Marrone?

THE WITNESS: Sir, that could be different people. They are usually indicated by a code that we give them.

THE COURT: I am asking who it means in this report. Does it mean Marrone?

THE WITNESS: Not necessarily. Can I point out? May I point out the symbol that will show you?

THE COURT: Yes.

(Witness indicates to the court).

THE COURT: Everything that is asked for is always somebody's life is in danger. It is ridiculous.

(The Court peruses report).

THE COURT: You have copies of this I assume?

MR. WELCH: I don't.

THE COURT: The Bureau?

THE WITNESS: That particular copy, I suppose we do.

THE COURT: (Sealing the report in envelope). Mark this 3501 and keep it in a sealed condition, Mr. Clerk, and in the safe. Let the record note that the Court has examined 3501 in camera and finds nothing in it which would in any way support defense counsel's claim of eavesdropping on the defense strategy.

MR. BRINDISI: I would like to question Mr. Ryan a little more specifically.

THE COURT: All right.

BY MR. BRINDISI:

Q Mr. Ryan, when you discussed this matter with Mr. Marrone at the Oneida County Jail, and particularly the conversation relating to this case, did you relay any findings that you may have had to Mr. Welch or the United States Attorney's Office?

A Yes sir.

Q When you discussed these matters with Mr. Marrone, I believe you indicated it was one or two weeks after he had been incarcerated; is that correct?

A I think so. I am not certain of the date.

MR. WELCH: Objection. I think the record is one or two weeks after the indictment.

MR. BRINDISI: Whatever that is. One or two weeks after the indictment.

THE WITNESS: Yes. I think it was fairly close.

BY MR. BRINDISI:

Q When you first talked with him, did he discuss with you the fact that he had called defense counsel to the Oneida County Jail to discuss these matters with him?

A I don't recall whether he said he called. I know he indicated he had discussion with other defense counsel.

Q And now after you talked to him and after he had already talked to the defense counsel, did he tell you that he would continue to call defense counsel to the jail for the purpose of finding out their defense?

A No.

Q He never mentioned that to you?

A He said he would not do it.

Q He said he would not do it. Did he discuss with you the fact that I was going to Puerto Rico with Mr. King?

A I don't recall him saying this.

Q Did he discuss with you the fact that an attempt was going to be made to get as much information to affect the credibility of the victim Sackman?

A I don't recall. He might have.

Q Did he tell you that I did go to Puerto Rico and I talked to an attorney in Puerto Rico concerning Mr. Sackman?

A No he did not.

Q Did he tell you I had talked to a Doctor in Puerto Rico concerning these transactions Mr. Sackman had in Puerto Rico?

A No he did not.

Q Did he tell you that his attorney was meeting with defense counsel throughout all these proceedings and discussing with defense counsel the various methods of strategy being used in the defense in this action?

A I don't recall specifically whether he said it or not. He might have, but I don't know.

Q Did you relay this to Mr. Welch?

A Relay which?

Q The fact that his attorney was still meeting with defense counsel?

A Possibly. I don't recall specifically. I believe I may have, but I don't know.

Q Did he tell you that the defendant King was going to take the stand in this case?

A Pardon?

Q Did he tell you that the defendant King was going to take the stand in this case in the defense of his case?

A I don't believe he told me this.

Q Did he tell you the defendant King would deny any knowledge that this was an extortion of an extension of credit?

A I don't remember this being mentioned.

Q Did he discuss anything with you about the defendant King pertaining to the defense in this case?

A Yes.

Q Will you tell us what he said?

A He mentioned that you were in effect not King's attorney, that you were Joseph Falcone's representative in this case.

THE COURT: This has nothing to do with this case.

Q I am talking about the defense in this case?

A I don't recall.

THE COURT: Did he tell you any evidence that the defendants were going to produce?

THE WITNESS: Other than what I have already said, I don't recall any.

THE COURT: I have not heard of any evidence that you already said. Did he tell you any evidence that they were going to produce?

THE WITNESS: Not that I recall.

THE COURT: Did he tell you the names of any witnesses that they were going to produce?

THE WITNESS: Not that I recall.

BY MR. BRINDISI:

Q He tell you that we had discussed a Vito LeCompte, a victimized by Sackman?

A No.

Q Did he tell you that we were going to call various people who were conned out of money by the victim during the course of years?

A No.

Q He discuss with you the fact that the victim had filed bankruptcy and had filed claims in excess of $91,000.00 in his bankruptcy petition?

A No.

Q After you discussed this with him at the Oneida County Jail, when was the next time that you discussed anything concerning this case with Mr. Marrone?

A I believe here in this building, shortly after.

Q Did he tell you that he would call a conference of the attorneys after we appeared in court on that day?

A No.

Q Do you know that he did call a conference of attorneys after we appeared in court that day?

A I know there was a conference.

Q Did he tell you anything about what was said in that conference pertaining to the defense of this case?

A No.

Q Did his attorney at any time ever advise you that he had discussions with other defense counsel?

A No.

Q Pertaining to the defense in this case?

A No.

Q You never talked to his attorney pertaining to this case?

A No.

Q He did tell you there was going to be a motion made for severance on his behalf, on behalf of King, I mean?

A Yes.

Q Did he tell you that his attorney there sat in on the conference and related back to him what transpired so he could then inform you?

A No.

Q Did he tell you--- strike that. After you advised him not to contact the various attorneys in this case, did he tell you that he did continue to contact these attorneys in order to induce a discussing of this case with him?

A I am sorry.

Q I will rephrase it. I believe you testified that you advised him not to discuss this case further with defense counsel?

A No, I never told him that.

Q You never told him that. Did he continue to tell you while you were talking with him, that he was discussing this matter with defense counsel?

A I would say yes, he was discussing.

Q Did he tell you the nature of the conversations he had with defense counsel relating to the defense in this case?

A Yes.

Q What did he tell you?

A That there was a heated argument between you and he and Mr. Longeretta present and he was told in effect he would be blamed for the whole case; that would be the basis of defense for the other side, and that he more or less blew his stack; he and you almost got into a fight there and had to be stopped, and that he made numerous wild threats about a Joseph Falcone and others in the area as far as if he ever testified against them.

Q I am not talking about that Mr. Ryan. I think the Court wants to know, just relating to the defense in this case. You say he indicated that the defense was he was going to be blamed for the entire transaction; is that right?

A Yes.

Q And he told you this?

A Yes.

Q What else did he tell you about the defense in this case other than that?

A This is all I recall.

Q Did he tell you anything about the defendant King would testify it was Marrone's money?

A I don't recall this.

Q Did he tell you that the defendant King would testify at the time the money was originally loaned, it was Marrone's and Marrone alone that was lending the monies that are the subject of this indictment?

A He said this is what he figured would happen.

Q Did he tell you that that was told to him by defense counsel?

A Not specifically.

Q Did he discuss with you the defendant Carl Mazza, for instance?

A Not regarding this case.

Q Not regarding this case. Did he tell you that his wife had sent Carl Mazza to Mr. King for the purpose of collecting this money that was owed to Mr. Marrone?

A Let me see. He said something to this effect. I am trying to think of what he said. He said he told Carl Mazza earlier that this could be his defense.

Q He was planning the defense for Carl Mazza; was that his indication to you?

A Yes.

Q Or was he planning the defense of any of the other defendants, if you know?

A He said he originally told everyone he was going to take the blame for the whole matter.

Q Did he tell you that he was guilty and he was going to take the blame for everyone?

A No.

Q Tell us what he told you?

A He said he was going to tell everybody else that he would admit that he was going to take the whole blame for it, although he didn't intend to do it.

Q In other words, he was lying to whoever he was telling it to?

A Yes.

Q Did he tell you that the defendant Zogby had alibi witnesses?

A No.

Q He mention any alibi witnesses concerning Mr. Zogby or any of the other defendants?

A No.

Q You know of any names he mentioned at all that were possible witnesses in the defense of this case?

A Not that I can recall.

Q You can't remember anything specifically. Do you know whether or not he did mention names of witnesses that would be called although he mentioned generally their exact names?

A No. I don't remember his mentioning names of actual witnesses who would be called. I would like to add that throughout any conversation I told him repeatedly I did not want any knowledge of this sort.

Q You mean pertaining to the defense in this case?

Yes.

Q He tell you that there was going to be a motion to the court to obtain the grand jury testimony of Mr. Sackman involving a John Longo?

A No.

Q Did he tell you any matters pertaining to Sackman and John Longo?

A No.

THE COURT: Are there any reports on this indictment other than the one that you produced marked 3501?

THE WITNESS: It would be in other forms, sir. Put in a particular case file and then transposed into this one.

THE COURT: I see. There is no underlying report?

THE WITNESS: It would be the same

information.

THE COURT: Is there any report pertaining to the subject. If there is I want it now, not four years from now on some 2255 motion. Do you have any report? I gather you do. Get the report.

THE WITNESS: Sir, I am not clear. The items themselves are our own paper work problemed into numerous different files as to any particular category they pertain to, and this is the-- everything from this person regarding this matter is put into this one report I gave to you. The items from other people that would be in other files.

THE COURT: Concerning this individual, are there other reports, concerning this individual on this case; yes or no?

THE WITNESS: No sir.

THE COURT: All right.

THE WITNESS: The problem as to himself is the subject of a great deal of investigation to the years.

THE COURT: I don't want that. All I wanted to know is there are no other reports about this individual in relation to this case, as far as you know?

THE WITNESS: No sir.

MR. BRINDISI: I have no further questions.

BY MR. LONGERETTA:

Q Mr. Ryan, you refer to a particular time when Mr. Marrone did mention Carl Mazza's name?

A Yes.

Q And this took place in Syracuse?

A No.

Q The conversation with him, you with him, that is what I am referring to. Where did that take place?

A Here at the County Jail. But I am not sure.

Q In addition to what you already told us with respect to Carl Mazza, Mr. Marrone tell you anything else with reference to Carl Mazza?

A Just personal feelings towards him. We talked about him.

Q Did he tell you of his involvement in this particular---

THE COURT: Sustained. I am not concerned with that. I can't seem to make that clear. He can tell him anything he wants to about his involvement in that underlying crime. What I am concerned with is there any eavesdropping on the defense.

BY MR. LONGERETTA:

Q Did he tell you any defense Carl Mazza planned to use?

A Yes, his own suggested defense.

Q He tell you of any other defenses Carl Mazza had?

MR. BRINDISI: Marrone, according to what Mr. Ryan indicated, suggested a defense to Mr. Mazza, and that is the defense that Mr. Mazza was going to use in the course of this trial, if I understand his testimony.

THE COURT: What was that defense? What was the suggested defense?

THE WITNESS: He said he told the defense of the other defendants that he was going to take the entire blame for the case.

THE COURT: Who was going to take it?

THE WITNESS: Marrone.

THE COURT: Marrone.

THE WITNESS: Take the blame on his own shoulders and he said he told, and I am vague because I didn't understand what he said, he told them he said to tell Mazza to somehow blame it on him, that he was doing that for his wife, or as a favor to Marrone collecting this money.

BY MR. LONGERETTA:

Q He indicate to you whether or not there was any truth or falsity to that defense?

A No.

MR. LONGERETTA: That is the defense Carl Mazza plans to use. This is a true statement, and in fact I have even taken a statement from him, and that is the defense with reference to Carl Mazza.

THE COURT: So what?

MR. LONGERETTA: I have no further questions.

THE COURT: Any other witnesses you want to call?

BY MR. SCHOLL:

Q Just one question with regard to Zogby. Did Mr. Marrone since the indictment tell you anything about the defense strategy to be employed by Jack Zogby?

A No he did not.

BY MR. MANGANELLI:

Q Speaking on behalf of the defendant Talerico, did Mr. Marrone at any time inform you as to the nature and the type of defense the defendant, James Talerico intended to employ during the course of this trial?

A No.

MR. MANGANELLI: All right.

BY MR. WELCH:

Q Mr. Ryan, to the best of your recollection, did I ever advise you to discuss this case any further with Mr. Marrone?

A Yes.

Q Did I advise you to tell Mr. Marrone we did not want any information regarding the defense in this case?

A Yes.

THE COURT: When did you tell him that? When did Mr. Welch tell you that?

THE WITNESS: I went to Mr. Welch, told him of the conversation with Marrone.

THE COURT: When? There is a calendar up there. When? Not what. When?

BY MR. WELCH:

Q Would it be fair to say it was after the meeting, after the two weeks after the indictment?

A Yes sir.

THE COURT: When was the indictment?

MR. WELCH: December 7, Your Honor.

THE COURT: All right.

BY MR. WELCH:

Q And did you return to Mr. Marrone and ask him for information regarding the defense?

A No.

THE COURT: This is December 7, 1972?

MR. WELCH: Yes.

BY MR. WELCH:

Q The information you testified to concerning this case that Mr. Marrone has given to you, was that volunteered or requested by you?

A Volunteered.

MR. WELCH: I have no further questions.

MR. BRINDISI: I have no further questions.

BY MR. LONGERETTA:

Q When you were given the suggested defense by Mr. Marrone concerning Carl Mazza, did you relate this information to Mr. Welch?

A I don't believe I did.

Q You did not.

MR. LONGERETTA: That is all I have.

THE COURT: Any other witnesses?

MR. BRINDISI: We asked for whatever agents talked to Mr. Marrone.

MR. WELCH: There was one other agent present when Mr. Marrone spoke to Mr. Ryan on that occasion. Shall I call him?

THE COURT: Let's get him. Let's get all

of them.

ROBERT J. KOLEVAR

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRINDISI:

Q Mr. Kolevar, you are with the Federal Bureau of Investigation; is that correct?

A Yes sir.

Q Did there come some time when you had a conversation with one Al Marrone at the Oneida County Jail in Oneida County, New York?

MR. WELCH: Objection, Your Honor. Too broad a question, with regard to the defense in this case.

THE COURT: Did you have a conversation with Marrone in the Oneida County Jail and if so, when?

THE WITNESS: No sir I did not.

THE COURT: Did you have any conversation with him at any time?

THE WITNESS: Yes sir.

THE COURT: Any place.

THE WITNESS: Yes.

THE COURT: Where and when?

THE WITNESS: In this building, approximately the last of January, the date I can't recall.

BY MR. BRINDISI:

Q Can you tell us generally the nature of the conversation you had-- no, can you tell us in particular whether or not he discussed with you this particular case?

A This particular case? Yes, he made reference to this particular case.

Q Can you tell us what he said about this case?

THE COURT: Did he say anything about the defense of this case?

THE WITNESS: Yes, he made one comment that I recall, but not about the defense in this case, and that was a statement to the effect that they were going to attempt to sever Louis King by approaching Judge Foley.

BY MR. BRINDISI:

Q Other than attempt to sever this case, was there any further discussion concerning the defense in this case at all?

A Yes sir, I think he made reference to the fact that plans were being made to kill the witness, in this case, Sackman.

Q So when I am talking about the defense in this case--- strike that. Did he indicate to you that he had talked to defense counsel?

A To the defense counsel?

Q Right.

A I honestly do not recall a statement to that effect.

Q He make any indication in that conversation that I, on behalf of Louis King, was going to Puerto Rico to examine a witness in this case?

A Yes sir, I believe he did. I think he said you were traveling to Puerto Rico to talk to some potential witness.

Q Did he tell you that one of the witnesses I was going to talk to was an attorney?

A No sir, I don't recall that.

Q He tell you that the witness we were going to talk to had to do with some negotiations between Sackman concerning the building of a hospital in Puerto Rico?

A No sir, I don't recall that.

Q Did he tell you that Sackman had taken something like $26,000.00 from these people as a result of these negotiations?

A No sir, I don't recall that.

Q Did he indicate to you that a person was going to be called as a witness from the City of Utica, New York, that Sackman took $3,000.00 from him to get his son out of Viet Nam?

A No sir, I don't recall that.

Q He tell you anything about any witnesses that would be called during the course of this proceeding?

A He made a reference to the fact that there was a possibility that certain jurors would be approached.

Q I am talking about witnesses that would be called as defense witnesses in this case?

A No sir, I don't recall that.

Q Did you have more than one conversation with Mr. Marrone concerning this case?

A No sir.

Q That was the only time you talked with him?

A I talked with him on one other occasion.

Q Where was that?

A That was in Syracuse, New York.

Q Was it after he met with defense counsel on that day?

A No sir, it was prior to that time.

Q What was your conversation with him prior to that time?

A Prior to that meeting in Syracuse?

Q Yes.

A I have never had any conversation.

Q I am talking about the conversation in Syracuse?

A I talked with him briefly to let him know if he desired anything from us in Syracuse, New York, I was available. That was the limit of the conversation.

Q Did you ever advise him not to talk to defense counsel in this case?

A No sir.

Q Did he tell you that he was going to continue to talk to defense counsel to find out as much about this case as he possibly could?

A No sir.

MR. BRINDISI: I have no further questions.

BY MR. LONGERETTA:

Q Was the name Carl Mazza ever brought up in the course of your conversation with Mr. Marrone?

A No sir.

BY MR. MANGANELLI:

Q Mr. Kolevar, the conversation that you just testified to which occurred in this Federal Building; is that correct?

A Yes sir.

Q Did that occur more than two weeks following the indictment?

A The date of the indictment, could you give me that date?

Q December 7th.

A Yes sir, I think it was after that.

Q Is it your best recollection it occurred at the end of January, 1973; is that what your testimony was?

A Yes. Again the date eludes me.

Q To your best recollection it was the end of January, 1973 in this court house?

A Yes.

Q As a matter of fact was it at the time when the Criminal Calendar Call was being held here in this court house?

A I don't recall that.

Q Did Mr. Welch or any other member of the United States Attorney's Office direct you not to discuss any possible defense in this case that the defendants or the attorneys may have with Mr. Marrone?

A Yes sir, he did. He specifically did.

Q And when did he inform you not to have that?

A Prior to the time when I traveled over here towards the interview.

Q So that you were admonished concerning this matter before you talked to Mr. Marrone at the end of December, 1973?

A Yes sir.

Q Did you ever discuss with Mr. Marrone or Mr. Marrone ever discuss with you the nature of or the type of defense or strategy that the defendant, James Vincent Talerico, contemplated using in this trial?

A No sir.

MR. MANGANELLI: I have no further questions.

BY MR. SCHOLL:

Q On behalf of the defendant Zogby, has Mr. Marrone ever talked to you about the defense that Mr. Zogby contemplates using in this case?

A No sir, not that I can recall.

CROSS-EXAMINATION

BY MR. WELCH:

Q Mr. Kolevar, did I ever tell you that I had heard that Mr. Brindisi had gone to Puerto Rico in an investigation of this case?

A Did I hear that from you?

Q Yes, did I ever tell you that?

A Yes sir, I think I recall a comment to that effect.

Q Is it possible that you knew Mr. Brindisi went to Puerto Rico from my telling you as against Mr. Marrone?

MR. MANGANELLI: Objection, Your Honor.

THE COURT: Overruled. Did you learn it from Mr. Welch or was it from Mr. Marrone?

THE WITNESS: I can't recall from which

source, from which place I heard it. I can't say.

THE COURT: Are you sure that you did not hear that from Marrone?

THE WITNESS: No sir, I am not sure of that.

MR. WELCH: I have no further questions, Your Honor.

(Witness excused).

THE COURT: Any other witnesses you want?

MR. BRINDISI: We are waiting for Mr. Marrone.

THE CLERK: He is here.

THE COURT: Bring him in.

(At this point the defendant, Albert J. Marrone and his counsel, Joseph Deery, entered the Court's Chambers).

ALBERT J. MARRONE

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRINDISI:

Q Al, it has come to our attention at some point you started discussions with the F.B.I., and I want to ask you some questions particularly relating to this case. When did you come back from Florida?

A December 19th.

Q Of 1972; is that correct?

A Yes.

Q Sometime after that you called various defense counsel up to the Oneida County Jail to talk to them; is that correct?

A I have to take the Fifth on that.

THE COURT: You are not entitled to take the Fifth on it. I direct you to answer.

THE WITNESS: I have to take the Fifth.

THE COURT: You can't take the Fifth. I direct you to answer.

MR. DEERY: This is on the record and there is an open indictment against the defendant.

THE COURT: This has nothing to do with that.

MR. DEERY: Since he hasn't been given immunity, anything said here may be used at a subsequent trial.

THE COURT: I don't see how it can possibly do that. I direct you to answer.

MR. DEERY: He would object to what the testimony would be if he feels it would incriminate him.

THE COURT: The question is harmless. He can answer.

THE WITNESS: I have to take the Fifth.

THE COURT: Go ahead.

BY MR. BRINDISI:

Q Did you call this group to the Oneida County Jail for the purpose of discussing this matter?

THE WITNESS: Fifth.

Q Did the defense counsel discuss with you the defense in this case?

A Take the Fifth.

Q Did you discuss with them your defense in this?

A The Fifth.

THE COURT: I tell you to all of this you have no right to claim that Amendment.

BY MR. BRINDISI:

Q Did I as attorney for King tell you that I was going to Puerto Rico to check a witness in this case?

A I stand on the Fifth.

Q Did I also tell you that Sackman, the victim in this case, had fleeced some people down there of $26,000.00?

A Fifth.

Q Did you tell that to the F.B.I?

A The Fifth.

Q You relate any of the defense pertaining to this particular indictment to any members of the Federal Bureau of Investigation?

A I stand behind the Fifth.

Q Did you give any of the defense to the United States Attorney's Office?

A The Fifth.

Q Do you know the complete defense of all the defendants in this case?

A I stand behind the Fifth.

MR. BRINDISI: I think this is just a copy answering of these questions with the same answer.

THE COURT: Take as long as you like.

BY MR. BRINDISI:

Q When was the first time that you discussed the defense in this case with any members of the Federal Bureau of Investigation?

THE COURT: The question is poor in form.

Q Did you at any time discuss the defense in this matter with members of the Federal Bureau of Investigation or the Attorney General's Office?

A Fifth.

Q If you did discuss that with them, when was the first time you had a conversation concerning the defense in this case with the Federal Bureau of Investigation or the United States Attorney's Office?

A I have to take the Fifth.

Q Did you tell the United States Attorney's Office or the Federal Bureau of Investigation the complete defense of Louis Charles King, Jr?

A I take the Fifth.

Q Did you tell the United States Attorney's Office or the F.B.I., the complete defense of James Vincent Talerico?

A The Fifth.

Q You tell the Attorney General's Office or the Federal Bureau of Investigation the defense of Jack Zogby in this case?

A I have to take the Fifth.

Q Did you tell them the defense of Carl Mazza?

A The Fifth.

Q Were you working as an undercover agent for the Federal Bureau of Investigation during the entire proceeding from the time of the indictment to the present time?

A The Fifth.

Q Were you spying on defense counsel throughout the proceedings so that you could relay information to the F.B.I., or the United States Attorney's Office?

MR. WELCH: I object to that.

THE COURT: Overruled.

THE WITNESS: I stand behind the Fifth.

MR. BRINDISI: I have no further questions, Your Honor.

THE COURT: Any other questions?

MR. WELCH: I have no questions.

THE COURT: You have no right to take the Fifth Amendment on any of these. I direct you to answer on the penalty of contempt of court. Do you wish to confer with your counsel. If so, you may. I suggest that you confer with him before I pronounce you in contempt, if you don't answer.

(At this point Mr. Deery and his defendant left the Judge's Chambers and then returned).

THE COURT: Let me ask government counsel. Mr. Welch, do you intend to give him immunity?

MR. WELCH: Not in this case Your Honor.

THE COURT: If he continues with the Fifth Amendment.

MR. WELCH: Not in this case Your Honor.

MR. DEERY: Your Honor, I would like to

move to dismiss our indictment on the grounds the defendant will be prejudiced into being forced to testify here and that your position in this case will be to inflict him with making a deal if he doesn't in this case, and the information that could be derived from testifying would be used against him in a subsequent trial.

THE COURT: I deny your motion. The information can't be used against him on any subsequent trial. We are seeking to ascertain here whether he was in on defense or discussions, with defense strategy, what the defense was to be, and whether he revealed that to the United States Attorney or the F.B.I.

MR. DERRY: Am I to take from that that this is sealed?

THE COURT: This is sealed. Sure. So are the rights of everybody here on the penalty of contempt. I direct you to answer.

BY MR. BRINDISI:

Q After you came back from Florida and when you were incarcerated in the Oneida County Jail, do you recall a meeting of defense counsel?

A Did I call a meeting of defense counsel?

Q Yes. Did you send for us?

A So I get to understand your question, did I call a meeting for all defense counsel?

Q Did you call me?

A Yes.

Q And did we discuss the defense in this case?

THE COURT: Who was there?

Q You and I were there?

A Yes.

Q Alone; is that right?

A Yes.

Q Did we have discussions regarding the defense in this case?

A The first time?

Q The first time.

A No.

Q Did we have some discussions at that time regarding the alleged crime?

THE COURT: I don't see how that is relevant.

Q Did there come some time later when there were discussions between yourself and defense counsel regarding the defense in this case?

A I have-- you don't mind if I qualify this question?

THE COURT: No.

THE WITNESS: Defense in what case? Your case or my case?

BY MR. BRINDISI:

Q Defense of the entire case.

A Are you keeping me out of it?

Q Was there any conversation concerning Louis King's defense in this case?

A I don't remember for sure.

Q Did you at any time indicate to the F.B.I., that you were going to be blamed for the entire transaction?

THE WITNESS: Is that part of their defense?

THE COURT: I don't know. Let's see if we could get a defense.

MR. BRINDISI: I am talking about the defense.

THE COURT: Put your question.

BY MR. BRINDISI:

Q Did you tell the F.B.I., or any member of the United States Attorney's Office that part of the defendant King's defense was to blame you for the entire transaction?

A I don't remember.

Q Did you tell any members of the F.B.I., or any members of the Attorney General's Office that Carl Mazza was going to use the defense that you or your wife had sent word to him to collect the debt?

A Yes.

Q You tell it to the F.B.I? Did you tell them that that was going to be his defense?

A I think so. I am pretty sure. Yes.

Q When was the first time that you had conversations with any members of the F.B.I., or the Attorney General's Office concerning the defense in this case?

A I don't know if we discussed the defense in this case. Like I said, I don't remember.

Q You don't remember?

A No.

Q Did you at any time tell them that Jack Zogby was going to be using alibi witnesses in defense in this case?

A No.

Q Did you discuss with them James Talerico's defense in any way?

A No.

Q Did you tell the F.B.I., or any other law enforcement agency connected with the government that I was going to Puerto Rico to talk to certain witnesses down there?

A I don't believe so. I almost sure that I don t believe so.

Q Did you tell them that I had discussed this case with two witnesses in Puerto Rico that would be called as part of the defense in this case?

A I don't remember.

Q Do you recall the discussions about the bankruptcy of J. Schuyler Sackman that you discussed, you and I?

A I don't recall the discussion.

Q Do you recall the fact that Sackman had fleeced some people out of $91,000.00?

A I can't say.

Q Do you recall this conversation?

A No.

Q Do you recall being present when Attorney Longeretta and myself were at the Oneida County Jail and discussed this matter with you?

A Yes, that I remember.

Q Now do you remember that Louis Charles King's defense was discussed at that time?

A No. I think the discussion was that Louis Charles King's informing.

Q That King was an informant?

A Yes. Was trying to be an informant, yes.

THE COURT: He wanted the right to bargain is that it·

Q Is that what it was?

A He is laughing now.

THE COURT: What that it?

THE WITNESS: Do you direct me to answer?

THE COURT: No. I just asked you if that was it.

THE WITNESS: Yes.

BY MR. BRINDISI:

Q Was there discussions--- did you tell your attorney that you were cooperating with the F.B.I., at any time from the time of the indictment to say last week?

A No.

Q Did you tell him that you were going to be granted a severance because of your cooperation with the F.B.I?

A No. I told him I was going to be granted a severance but didn't give him a reason.

Q Did you tell him to continue a meeting with defense counsel throughout the entire proceeding from the time of the indictment until last Thursday?

A No.

Q Do you know that he did meet with defense counsel throughout that time?

A I had no knowledge. He didn't tell me about it.

Q Did he advise you of the defense that was going to be used in this case on those occasions when we talked to him?

A No.

Q Did he tell you that a motion for severance was going to be made?

A By who?

Q By King.

A I think you told me that.

Q You think I told you that. Was a discussion as to the calling of various defendants to the stand, if allowed to do so by the court?

A I think I brought that up.

Q Did you discuss any of this with the F.B.I., or the Attorney General's Office?

A No. No, not that I can remember.

Q Do you recall conversation concerning a real estate broker in Albany, New York, who was involved in various transactions with Sackman?

A Do I recall talking to him?

Q To either myself or Mr. Longeretta or any of the defense counsel?

A No.

Q Do you recall a meeting with all defendants' counsel present when you indicated that you were going to take the blame for this entire situation?

A Yes.

Q Do you recall any conversations that we had concerning transactions that Sackman had with one John Longo?

A Recall any conversations with him?

Q Defense counsel.

A No, I don't remember.

Q Did you relate any of this information to the F.B.I., or the Attorney General's Office?

A Not that I can remember.

Q Did you discuss any defense at all on behalf of any of the defendants with any member of the F.B.I., or the Attorney General's Office?

A I think just Carl's case.

Q Carl's case. And you told them the complete defense of Carl Mazza?

A No, I just told him what he might say.

MR. BRINDISI: I have no further questions, Your Honor.

MR. SCHOLL: No questions.

MR. MANGANELLI: No questions.

THE COURT: Any questions, Mr. Longeretta?

BY MR. LONGERETTA:

Q Concerning Carl Mazza, Al, how did you learn that this might be his defense in this matter that you related?

A I think I got it third hand or fourth hand. I don't know who would give it to me. I don't remember.

Q And do you recall exactly what agents you told it to?

A No.

MR. LONGERETTA: That is all I have.

MR. MANGANELLI: Nothing from me.

THE COURT: All right, you are excused.

(Witness excused).

THE COURT: Anyone else you want to call?

MR. BRINDISI: I don't believe so.

MR. LONGERETTA: No, Your Honor.

MR. MANGANELLI: No, Your Honor.

MR. SCHOLL: No sir, Your Honor.

THE COURT: What is your motion?

MR. BRINDISI: My motion is to dismiss the indictment on the grounds the defense is unable to get a fair trial based on the fact the co-defendant was working with the F.B.I., and information concerning the defense in this case was turned over to the F.B.I., and then to the Attorney's Office and because the prosecution knows the complete defense of the various defendants.

MR. WELCH: We oppose that on several grounds. First the indictment should not be dismissed even if there was an informant relaying defense information to the government that would have to do as a matter of fact with the fair trial. On the other hand, Your Honor, all the information that Mr. Brindisi has elicited from these witnesses was information that I have either surmised from remarks made-- for instance, Mr. Scholl on the record asked Your Honor for a voir dire investigation to investigate the alibi witnesses of these defendants. That is how I became aware of that.

Mr. Brindisi asked for either an adjournment or something to do with a case he had with United States Attorney Wildridge, because Mr. Brindisi was tied up in Puerto Rico on a loanshark case. That is how I got that information.

The information as to Carl Mazza, I for the first time today hear Mr. Mazza was going to say Mr. Marrone told him to collect the money, and I heard from Mr. Brindisi's remarks the information that all the defendants were going to take the witness stand. In that sense it was from Mr. Brindisi that we found out about the defense, when he said that they were to take the stand.

THE COURT: He said that before me last week.

MR. BRINDISI: I don't know if it is proper. I know an attorney should not testify in court, but I would like to state for the record, and if you want it under oath.

THE COURT: I think you and Mr. Welch ought to go under oath. I think you should.

MR. BRINDISI: I would like to go under oath.

LOUIS BRINDISI

being first duly sworn, testified as follows:

MR. BRINDISI: I would like to state for the record, Your Honor, on a few occasions, I don't know the exact number, only I discussed with Albert Marrone the defense in this matter, in particular the defense of Charles King, Jr.; that I did discuss with him various witnesses who would be called during the course of the trial. I discussed the possibility of impeaching Sackman based upon prior dealings he had with various people in the community and outside of this country.

He knows the complete defense of King, without going into what that defense is.

Now what happened is, he originally called me to the Oneida County Jail. Then I received a letter from his attorney advising us not to go to the Oneida County Jail because he was being represented by counsel.

At the next court appearance Al Marrone told his attorney that he should be reprimanded for sending me that letter since he wanted to further discuss this case with me, with the thought in mind of preparing a defense. The attorney came to me and told me it would be alright for me to see Al Marrone.

Then we met with various other defense counsel, and possibly at that time with all of us, and talked with Marrone. I believe on one occasion I went with Mr. Longeretta up to the Oneida County Jail -- I think the other two attorneys were not available. At that time I again discussed the defense in this case with Al Marrone, without getting into what that defense is.

He called for a meeting of the attorneys and the various defendants after motions were returnable in Syracuse, New York. We had a meeting in one of the side offices; Mr. Marrone present and his attorney and all counsel. At that time we again discussed the defense in this case.

I don't recall the last time-- the last time we discussed this case was I think when I made a motion for severance before Your Honor and there was indication that there was a possibility that the action might be passed to Mr. Marrone. I advised the fact that I heard a rumor that the action was going to be passed to him.-- I don't know if that information was related to the court, but the F.B.I. told Al Marrone that I had made that accusation, and we had another meeting in the Marshal's Office at which time all defense counsel were again present, and at which time we discussed some of the defense in this case before Al Marrone.

So it has been a continuous type of thing. If the F.B.I., or United States Attorney's

Office did advise him that he was not to discuss this case with us, the only thing I can say to the court is that he has repeatedly requested meetings not only with myself but other defense counsel and we had these meetings and did discuss the defense with him.

THE COURT: Are you finished?

MR. BRINDISI: Yes I am.

THE COURT: Any other defense counsel wish to add or say anything or confirm anything?

MR. MANGANELLI: The only confirming factor that I can make is that the request was made by Mr. Marrone in Syracuse following the arraignment of these defendants for a meeting, which was held in the court room. The United States Marshals were posted at each door in the court room, and at that time the defendants were all present and the attorneys for the defendants were present, and matters concerning defense were discussed, as far as James Talarico and as far as each defendant my recollection is. The only other meeting I had with Mr. Marrone and the defendants and the defense counsel was held in this building, and that was on February 1, when Your Honor was here on Calendar Call, at which time we were given a message that he wished to discuss the case and hold a meeting with us, and we used the Marshal's Office in this building, and matters were discussed.

THE COURT: Matters relating to the defense of the case?

MR. MANGANELLI: Yes.

MR. SCHOLL: Your Honor, I attended two meetings at which Mr. Marrone was present. One in Syracuse, in the court room and also the meeting over in the United States Marshal's Office. I was present with my client and the other defendants' counsel. And at the meeting in Syracuse, the defense of the case was discussed at length. Mr. Marrone did take an active part in that discussion. At the meeting in this building, Mr. Marrone did take an active part in the discussion of the defense of this case.

MR. LONGERETTA: If the court please, I also did attend meetings with Mr. Marrone, particularly the one that Mr. Brindisi referred to in the County Jail. And to the best of my recollection everything he said was true, and that he discussed and also referred to the meeting in Syracuse. I was in attendance at that meeting and at both meetings the defense of Carl Mazza was brought out, particularly the meeting in Syracuse and again was brought out in the conference at the jail. And the defense, Mr. Marrone indicated, as a satisfactory defense and was a true defense of the defendant, Carl Mazza.

THE COURT: Mr. Welch?

MR. WELCH: Your Honor, the information that I have in regard to the defense of this case is just as recounted by Mr. Ryan. I do recall telling Mr. Kolevar, my converations with Robert Wildridge of our office who had a matter with Mr. Brindisi, who found out that Mr. Brindisi was in Puerto Rico investigating this case, speaking to witnesses there and from that I gleaned what Mr. Brindisi was investigating in Puerto Rico. I have not received that information from any member of the F.B.I., or Mr. Marrone.

MR. BRINDISI: May I say something, Your Honor? Mr. Wildridge was using, had subpoenaed a witness in a gambling case to appear before the Federal Grand Jury and I called him and asked if he could adjourn it to the following Monday. I told him I was going to Puerto Rico. I never told him I was going down to interview a witness pertaining to this case. I don't think I would give out that kind of information.

THE COURT: You probably don't have to.

MR. BRINDISI: This is assuming he said that. I did tell him I was going to Puerto Rico. There is no question about that.

THE COURT: Do you wish to say anything?

MR. WELCH: The only thing I can say is Mr. Marrone has not been working as an informer in the camp of the United States, and the information we were able to glean was from activities of counsel and remarks on the record, and we don't see any problem in regard to a fair trial of these defendants and would oppose the motion. If Your Honor would like briefs, we would be happy to do so.

THE COURT: I would like briefs by 5:00 o'clock and any recent decisions.

MR. BRINDISI: Is it my understanding that this matter is adjourned?

THE COURT: Adjourned until tomorrow morning. I don't need briefs. Give me a couple of cases. Briefs don't need to refer to the fact at all. Just give me some citations.

MR. WELCH: If Your Honor please, I can give you two citations now.

THE COURT: All right.

MR. WELCH: United States vs. Lusterino, 450 F.(2d), the page number which I don't have.

THE COURT: Yes.

MR. WELCH: The second case is United States vs. Rispo, 460 F.(2d), the page of which I do not have.

THE COURT: What Circuit?

MR. WELCH: Lusterino is 2nd Circuit. Rispo is 3rd Circuit.

THE COURT: Let me read the 2nd Circuit case. Just get it. I will read it right here today. Maybe we can avoid adjourning the trial.

(At this point Mr. Welch left the court chambers and returned with a law book which the court read).

THE COURT: I don't think this case is in point at all. There are cases like this, but not something I could put my finger on. The Lusterino case is not in point. Off the record.

(Discussion was held off the record which the reporter was asked to take after which a recess was taken until 3:10 P.M., where the following occurred in the court's chambers).

THE COURT: We now have this jury waiting around since 10:00 o'clock this morning. It is not ten after 3:00. I don't know why these motions weren't made sometime before the morning of the trial. Any reason for the delay?

MR. BRINDISI: Yes. We did not find out until Saturday a severance was granted to Al Marrone with the consent of the United States Attorney's Office, and that is when we first had the discussions about this particular motion.

THE COURT: I see. Well since then you have all been looking up law. Do you have anything to show?

MR. BRINDISI: I have. We looked at the Caldwell case and the Brown case and that is under the due process clause of the Fifth Amendment and the fair trial clause of the Sixth Amendment.

THE COURT: Where does this get you?

MR. BRINDISI: If our motion is granted--

THE COURT: Neither of those grant the motion to dismiss the indictment. All those held was that the defendant was entitled to a new trial. All of them held he was not entitled to an acquittal, and in Caldwell he was tried again and convicted, and the conviction sustained, and the Supreme Court refused to review it.

MR. LONGERETTA: It was my understanding in Caldwell and Brown, the reason the decisions resulted in that manner, the court determined that the evidence that was revealed through these eavesdropping or whatever they were doing, was not that essential to the crime charged against the defendant. That is why they didn't throw the case out completely. They said in Caldwell that the evidence was not that substantial.

THE COURT: If they said in the Caldwell case that they should not grant acquittal, then the Supreme Court makes it perfectly clear that they should not grant then.

MR. BRINDISI: I think in this case we contend that the government knows the defense of the defendants and in no way---

THE COURT: We really don't know the defense until we hear the trial.

MR. LONGERETTA: I can affirmatively state that.

THE COURT: I don't know how you could. I was a lawyer a long while before I was a judge and as a judge I know that many a change in tactics develops during a trial. And I could not put that defense forward at all.

MR. LONGERETTA: That is probably true.

THE COURT: And I don't see where this gets you. Even if I were to grant you any kind of relief, all you get is delay, and I don't see that that does you any good.

I am satisfied that these are the cases. They start with Copeland, Caldwell, Solvay, two of them Court of Appeals for the District of Columbia and one in the United States Supreme Court. It seems to me in the end the court must find that there is some real prejudice to you but I don't see anything on the record that I have heard so far of a persuasive nature that would permanently deprive you of a fair trial.

MR. BRINDISI: I think the defendant Marrone's testimony was quite evasive today. I feel that he has been cooperating with the government. I feel if he is granted immunity in this one particular case, he may come out with the truth and tell everything that took place in his negotiations with the F.B.I. There is no question he is being used by them as an informer.

THE COURT: I don't have to guess as to what he said. I was here and you were present about the conversations. You heard some of them.

MR. BRINDISI: I have and the attorneys for the defendants have stated under oath that the tactics of the defense were as stated before them and he knew them, and there is no question that he was talking to the F.B.I. He denies telling the F.B.I., anything, but the F.B.I., on the other hand indicate that they knew the defense of Carl Mazza, that they knew I went to talk to witnesses in Puerto Rico, whether they came from Mr. Welch or Mr. Marrone.

THE COURT: We have the testimony of Mr. Welch that he learned it from Mr. Wildridge, and you told it to Mr. Wildridge.

MR. BRINDISI: I admit that.

THE COURT: What else?

MR. BRINDISI: We have a conspiracy in this case. This is a crime which is taking place without too many people being present. If the government has entered into a conspiracy with Al Marrone, how would that come to our attention. We know he is an informer.

THE COURT: The only way to explore that is to put the witness on the stand and hear what he has to say. On the basis of this record, what do you claim that the prosecution learned as a result of this?

MR. BRINDISI: My claim is the prosecution knows the entire defense of the defendants.

THE COURT: Demonstrate it. I can't go on an old statement.

MR. BRINDISI: Al Marrone has indicated to the government that there was a transaction with this victim, Sackman. That King and he were participants in the original transaction and that it was a usurious transaction.

He further indicates that he was told that the entire blame for the transaction would fall on him, on Marrone. That he knew all of this as a matter of defense strategy. He said we were going to put the blame on him, to try to take the blame away from the defendant King, when in truth and fact, he thought in front of the attorneys who he called, that he was going to take the blame for everybody. This was after the court hearing when all defense counsel were present, and he said he was quite clear on this, and said "I am going to take the blame, that my wife calls Carl Mazza in, and that is how he got involved." So he not only knew the defendant's defense but helped set it up throughout the entire course of the proceedings.

All defense counsel are working together. We had many conferences with the defendant Marrone's attorney up until last Thursday night, the day before the severance. We had a meeting in our office and went over the various strategies that we would use in the course of this trial.

I can't believe Mr. Marrone didn't advise his attorney that he was cooperating with the F.B.I., and we know through his attorney that Marrone was running the show; that he had to make a motion for severance. As you recall, I argued for the severance of Mr. King and at the time Mr. Marrone's attorney came up and said he would not claim the provision of self-incrimination, and that he would testify he has been working hand in hand with the defendants and have his attorney have us called, and then I found out. Saturday night-- I called yesterday and there was a message that Marrone had been granted a severance, and this was the thing we talked about Thursday. He said, "I don't how he can possibly grant a severance," and I don't know how I am going to get a severance except Marrone said to make a motion, and there was no opposition from the Attorney General's Office.

We have been sitting here like patsies and we find out that Marrone is informing all the way through. We should have been advised of that by the Attorney General's Office. They should have advised us. We discussed everything with them and they knew he was informing.

THE COURT: What do you say, Mr. Welch?

MR. WELCH: Your Honor,--

THE COURT: If you could prove that there was a set up, it would be a nice charge for obstruction of justice.

MR. WELCH: We can prove it now. The situation is such that it certainly looks sufficiently like it.

THE COURT: Don't give me a lot of conclusions. What should I do about this motion?

MR. WELCH: Our position is on the facts in this record, Your Honor should deny the motion in view of the fact the defendants have not sustained any prejudice.

THE COURT: How do you get around the Caldwell case, the Copeland case and the Salvay case? Have you read them?

MR. WELCH: I read Salvay. I was about to read Caldwell when your secretary removed it from the library.

THE COURT: I will dismiss the jury for the day.

MR. WELCH: My recollection is that they did remand them for a new trial.

THE COURT: I guess they did. But how do you get around it? How can I remand this for a new trial?

MR. WELCH: There has been no trial and there has been no prejudice suffered here.

THE COURT: Bungle; bungle; bungle.

MR. LONGERETTA: Your Honor asked the

question, asked as to exactly what did the prosecution discover as a result of Mr. Marrone's statement in regard to Mr. Mazza. They did discover the entire defense.

THE COURT: The entire defense? I wouldn't say that.

MR. LONGERETTA: No Your Honor. The defense was-- I guess he did enter the picture, but not because of Lou King or the other alleged conspirators who made the loan and attempted to collect that loan. He was called in through Al Marrone's wife and his activity ensued after that and there was no other connection.

MR. MANGANELLI: May I be heard?

THE COURT: Sure.

MR. MANGANELLI: It would appear to me the greater question is whether or not the government's case has been changed to such a degree by their activities, and I draw Your Honor's attention to the remarks of the United States Attorney who indicated that some two weeks after the indictment he admonished or was supposedly advised the Federal Bureau of Investigation not to make inquiries concerning our defense. Agent Kolevar's testimony clearly indicates at the end of January he did ascertain some facts which formed a part of the defense. It would seem to me these cases which remanded the case back for a new trial occurred obviously after conviction.

THE COURT: That's surely after a full disclosure of all that occurred and penetrating the defense camp.

MR. MANGANELLI: That is true, but the Appellate Courts had no other recourse but to remand it but if they had the factors we have here, then there is no way of changing it and it makes it impossible for the defendants to have a fair trial.

I urge Your Honor to consider and grant the motion put forth by the defense counsel.

THE COURT: Well you have not demonstrated to me that it is impossible for these defendants to have a fair trial, and I asked you to demonstrate and I got a lot of argument.

MR. BRINDISI: May I ask a question, if the United States Government has the defense of all these defendants, if they found this out through Al Marrone--

THE COURT: But you have to establish that they have. We are holding a hearing. Tell me where the government has the defense of all the defendants?

MR. BRINDISI: I tried to indicate that to the court, that Marrone told them about certain witnesses.

THE COURT: That is not the entire defense. I suggest we finish argument on this thing. You get the transcript from Mr. Jordan and demonstrate exactly what you are talking about, not just give me a lot of hot air. I am not interested in hot air.

MR. BRINDISI: Your Honor, I have another request. I don't know if it is proper at this time. On this motion for sequestering the jury, while we were given the opportunity to look at some law on the first two cases in the government's brief even after the jury entered into their deliberations, it was all right not to have them sequestered.

THE COURT: It is entirely up to the judgments of the judge and in these facts I am exercising my judgment in favor of sequestering, and I won't hear any further argument on it.

MR. BRINDISI: There has been no other case in Oneida County where the jury has ever been sequestered. The publicity given to this case is no different than the publicity given to any other case.

THE COURT: From what I heard this morning there is a very good reason to do it, bearing in mind that I have already read Exhibit 3501, and for that reason I am sequestering the jury. Whether this is the only one where it has ever happened in Oneida County, I care not.

MR. BRINDISI: I just wanted to note my objection.

THE COURT: You made your point. I want you to show me that the prosecution has all the defense even assuming that Marrone knows the defense, I don t see how you trace it to the United States Attorney's Office, and that is all I want on it. Trace it to the prosecution. Surely if there had been a new trial, you came in for a new trial, that is what you would have to do. Unless you do that, I don t see how you have a leg to stand on. As a matter of fact you have to do it whether I grant the motion or not. That is it. I will see you in the morning. Report at 9:30 and see if you could demonstrate the point.

I suggest Mr. Welch you read those cases.

(Whereupon at this point an adjournment was taken until February 21st, 1973 at 9:30 o'clock A.M.)

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Proceedings, dated Feb. 21, 1973.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

- against - :

LOUIS CHARLES KING, ALBERT J. MARRONE, : 72-CR-283
JAMES VINCENT TALERICO, JACK ZOGBY
and CARL J. MAZZA, :

Defendants. :

The trial in the above-entitled matter was continued pursuant to notice at the United States District Court in and for the Northern District of New York, at Utica, New York, pursuant to adjournment on February 21st, 1973, before HON. LLOYD F. MAC MAHON, United States District Judge sitting by designation, and a Jury.

* * * * *

(The following proceedings took place in the Court Chambers).

THE COURT: All right, proceed.

MR. BRINDISI: Your Honor. I don t know if I should continue under oath but I think there should be some general discussion of the background of the proceedings which took place prior to coming into court and the tactics used by the United States Attorney's Office in this case. We had a hearing in Syracuse, New York, where tapes were played allegedly taken by the victim concerning various transactions he had with the defendants.

THE COURT: You went to the United States Attorney's Office?

MR. BRINDISI: Yes.

THE COURT: That is not a hearing.

MR. BRINDISI: We went to the court house and listened to tapes. It was not a hearing. O.K.

THE COURT: All right.

MR. BRINDISI: After we heard the tapes, and this had been one of the general tactics of the prosecution to try very vigorously to have the defendants plead guilty. He stood up after that hearing, at which time the defense counsel and defendants were present, and said, "You got two weeks left to plead; if you don't plead you are going to get Mac Mahon," and he insinuated at that time if we had you as a trial judge, we would not get a fair trial and there would be a very lenient sentence if the defendants pled guilty.

Then he starts saying that an informer, Al Marrone, one of the co-defendants in this case, without advising counsel that this person is an informer, knowing full well after talking with the F.B.I., he is still discussing the case with the defendants and defense counsel, that this happened on several occasions as we indicated yesterday.

After that, and while Al Marrone is acting as an informer, and was arrested we on two occasions went up to the Oneida County Jail at the request of the defendant Marrone, one time after he was an informer and one time before he turned informer, according to his testimony yesterday, and at that time we discussed fully the defense in this case in detail. I advised him I was going to Puerto Rico. I advised him there were witnesses down there.

THE COURT: At this time Marrone was represented by another lawyer?

MR. BRINDISI: Yes.

THE COURT: What were you doing talking to him then?

MR. BRINDISI: I will explain that. Marrone's lawyer sent me a letter telling me not to go up to the jail to talk to Marrone, and I didn't know the first time I went up that Marrone was represented by an attorney. He had not been assigned counsel. I had known him in the past and I went up there.

THE COURT: You claim he had a conflicting interest if you were representing one of the other defendants?

MR. BRINDISI: I didn't know there was a conflict at the time.

THE COURT: Mr. Brindisi, I am making it known to you that this transcript may be made known to the Bar Association.

MR. BRINDISI: I am telling the truth. I can't go back on what happened. I want to be truthful as to what happened. And what happened is that Al Marrone tells his lawyer he wants to talk to me. And he said, "All right, go up and talk to Marrone. I have no objection."

We then met with Marrone, the defendants with their counsel, and we got deeper involved with the discussions in this case. He knew I was going to Puerto Rico. He knew I was going to interview witnesses down there that had to do with the credibility of Sackman.

The United States Attorney's Office says they knew about the Puerto Rico deal. I never told that attorney that I was going down to work on the King case. I told him I was going to Puerto Rico.

There was some part in the transcript yesterday after being apprised that I was going to Puerto Rico to discuss this with the victims of Sackman, about two people I was going to see. I told Marrone about the $3,000.00 being taken by Sackman to get the man's son out of Viet Nam.

Sackman's father was Julius Sackman, who was with the Attorney General's Office. He told this man, "My father is a powerful man. I can get your son out of Viet Nam if you give me $3,000.00." His wife was hysterical. He wanted his son back, and that is the last time he saw Sackman.

He also knew, Marrone, about the real estate man down in Albany, New York where Sackman fleeced him out of $40,000.00 and went to the Bankruptcy Court with him and he knew I was going up to Attica Prison where John Longo was, who was involved with Sackman, where they fleeced some people in the north country out of $1,000,000.00. I don't know the exact crime. I know he entered a plea of guilty and went to jail.

I told him I had learned that Sackman had testified before the Grand Jury in Jefferson County regarding this matter, and I was going to make provisions to try to get the testimony of Sackman before that Grand Jury.

He knew about the motions for severance, at which time as I indicated yesterday, he got up in court and made statements that he would testify in order to damage our defense. I was originally informed he would take the Fifth Amendment.

I hear, and maybe I was mistaken, that under the law of New York if a defendant was going to take the Fifth Amendment, that defense counsel had the right to comment on the failure during the trial.

At any rate at that time, acting in good faith, and that was my objective, and he knew every step along the way and certainly planned the defense of Carl Mazza. He told us, and there was a group of people, that Carl Mazza was brought into the picture because Al Marrone's wife asked him to see Sackman to collect this debt.

All through this picture the United States Attorney's Office knew that Carl Mazza was an informer. Ryan testified that he knew he was still seeing us and I think the least that could have been done was to advise counsel of the defendants not to meet with this guy, that there was a possibility that this could happen, which is exactly what did happen, that he was an informer, and there is no question but that he told Ryan of Mazza's defense.

There is no question even on the record that Mr. Welch knows what Mazza's defense is.

I think the main thing in this whole case was to attack Sackman's credibility by the use of those witnesses that we thought we had.

This is like a spreading cancer. We appear in court and we find out that this man may be an informer.

We had a hearing yesterday and the questions asked him based on your instructions were to see whether he divulged any of our defense to the F.B.I., or the United States Attorney's Office and I noticed when I was asking him about giving my defense away through questions to the United States Attorney's Office, that he was taking vigorous notes of what I am asking. On top of that you seal our lips and tell us not to discuss this case. And for the first time my client gets on my back. He says if I am convicted I go to jail. Why can't I know what is happening in these proceedings.

THE COURT: Is your client out on bail?

MR. BRINDISI: Yes.

THE COURT: Bring him in, if he insists upon knowing this. Any of them can come in.

(At this point Mr. Brindisi left the court's chambers to get his client).

MR. MANGANELLI: My client has not, for the record, I have not disclosed anything of this and neither has he insisted.

THE COURT: If he wants to know what is going on, he is entitled to come in.

MR. LONGERETTA: Does Your Honor instruct that we are at liberty to disclose to our clients?

THE COURT: Who is present now?

MR. BRINDISI: The defendant King is present, Your Honor and the defendant Talerico and the defendant Mazza and the defendant Zogby.

THE COURT: We are discussing legal points. I don't see how you can be of any aid to your lawyers, but if you insist on staying or having any part of the record read to you that occurred yesterday, you may hear it. But I want to tell you that it involves an informer, and if any harm comes to him you will regret the day it happens. You are not talking to some boob.

Now do you want to know what transpired or what occurred here yesterday?

MR. LONGERETTA: No. He is not concerned with what happened.

THE COURT: You understand that they are legal points.

MR. MAZZA: My attorney speaks for me.

MR. LONGERETTA: My client indicates he does not desire to be present at this hearing following what I told him yesterday that our lips were sealed.

THE COURT: What about you?

DEFENDANT KING: I would like to hear it.

MR. SCHOLL: Your Honor, the defendant Zogby does not want to hear it.

THE COURT: Is that agreeable to you. You want to hear the whole transcript of what occurred yesterday?

DEFENDANT KING: I would like to.

THE COURT: All right, read it Mr. Jordan.

(At this point the court reporter read back the testimony given by the witnesses on the previous day).

THE COURT: Do you want a discussion between you and your attorney?

DEFENDANT KING: No.

MR. BRINDISI: Getting back to what we were discussing previously, Your Honor, as I indicated, in fact yesterday after discussing this matter with you, that this entire proceeding be sealed, last night there appeared in the Utica Observer Dispatch on the front page the headlines, "Loan Trial Jurors To Be Isolated Here", and it says:

> "The jury in a loansharking trial in Federal Court in Utica will be isolated, court officials said today.
>
> This will be the first time in recent years that a federal jury will be.
>
> Five area men are accused of violating federal laws in connection with loansharking and extortionate credit. Four of the men were arrested by Federal Bureau of Investigation agents in December

The fifth was extradited from Florida, where he was imprisoned on possessing a stolen drivers license.

The indictment in the case charges the men loaned $4,000 to a Syracuse businessman at $1,000 a month interest.

Charged in the case are Albert J. Marrone, 31, 2643 Dunham Road, who was extradited from Florida; Louis C. King Jr., 43, 5531 Sunrise Terr.; Jack Zogby, 47, 1148½ Leeds Street; James Talerico, 51, 702 Rutger St., and Carl J. Mazza, 28, 1154 Conkling Ave.

Court Officials did not say why the judge, Lloyd F. MacMahon of New York City, decided to sequester the jury.

The judge was to select the jury today. He ordered that the names of the jurors not be published.

Judge McMahon also ordered a separate trial today for Marrone.

The indictment accuses King and Marrone of loaning J. Schuyler Sackman, a Syracuse businessman $4,000 on Sept. 18. It charges the men with threatening

> and menacing Sackman with a knife and a revolver and with striking Sackman and placing a knife to his throat.
>
> Electronic surveillance equipment was used in gathering evidence against the defendants, Assistant U. S. Attorney Eugene Welch said. He said the equipment was used with the permission of one of the defendants.
>
> Federal Judge Edmund Port ordered Welch to turn over copies of the tape recordings to the defendants December 29.
>
> At the same time, Judge Port warned the defendants against any attempts to 'fabricate evidence.'"

Now we held that one thing---

THE COURT: Just a minute Mr. Brindisi. You are misstating the court's directions and rules and a motion to sequester the jury were not held. A hearing was held on what occurred between the F.B.I., agents and Marrone. That was sealed. But obviously I couldn't seal and have not the right to seal a motion to sequester a jury.

MR. BRINDISI: I am sorry, Your Honor. I was under the mistaken impression that that was it.

MR. WELCH: Your Honor---

THE COURT: Before we get to this let's complete his present motion.

MR. BRINDISI: I am trying to show the tactics throughout the entire proceedings.

THE COURT: That had nothing to do with the sequesteration motion, Mr. Brindisi. As I heard the transcript read back again. I had confirmed the impression I had yesterday that about 99 per cent of the questions asked by you and your co-counsel were immaterial to the issues. I directed you to come back here this morning and demonstrate to me what defense specifically the prosecution learned from the F.B.I., in this case through Marrone, as a result of talking to Marrone. That is what you were asked to do.

MR. BRINDISI: That is what I thought I was doing.

THE COURT: Rather than telling me about the prosecution's tactics in general. I don't care about the prosecution's tactics in general. The only thing I am concerned with is whether the defendants get a fair trial.

MR. BRINDISI: As I tried to indicate from the beginning this whole line, even by the questions I had to ask the witnesses, which questions were being taken down by Mr. Welch, those questions gave away most of the defense that I would be using throughout the course of the trial which after that there was an incident yesterday where you put in the evidence 3501, which pertained to certain things which took place yesterday and you read those. Now I don't know whether or not they had to do with any of the defendants in this case. If it did, I don't know whether or not there has been prejudice in summary against the defendants in this trial, because I don't know what is contained in there. There is an informer who gave it to the agent, and we had to ask questions which gives away my defense and the judge has to read certain items and whether or not he should not be in possession of them in this case.

I think further there is no question there was discussions between Albert Marrone and the F.B.I., and the U. S. Attorney's Office; there was no question that there was discussions that the defendant King was going to testify, that this was not his money, that the money came from Al Marrone, that all of the blame then, according to Al Marrone, was going to be placed on him for this transaction, and that King was innocent of any extortionate extension of credit.

2. That Carl Mazza was going to testify, and this is his defense, that Al Marrone's wife sent for him; that she told him that this money was owed to Al Marrone by Sackman; she had problems financially and she wanted Carl to get this money for her; that Carl Mazza called up Lou King and that arrangements were made at which time Lou King asked Sackman to meet with him, and this was the whole theory of the defense in this case.

And then, according to Marrone and the

F.B.I. Agents, this was revealed to them and that is why I think the defendants have been prejudiced, Your Honor and this is a prejudice that can't be eliminated, once they know our defense. There is nothing we can do about it. For those reasons I asked for the dismissal of the indictment under the Fourth Amendment. There has been eavesdropping by the government, by use of informers which violate the rights of the defendants under the Fifth Amendment, and the fair trial portions of the Sixth Amendment have been violated. I think all those rights guaranteed to the defendants by the Constitution have been violated.

Those are the reasons I have.

MR. MANGANELLI: With Your Honor's permission, on behalf of the defendant James Talerico, I would like to state my argument in support of the motion for judgment of acquittal.

The basis for our argument, attempting to demonstrate to the court where this defendant and these defendants have been prejudiced since this violates the right of the defense to effectively cross-examine the People's witness Sackman.

I submit to the court that in great measure the outcome of this trial will depend on the credibility of the witness Sackman. It appears to me without being redundant, and referring back to all of the various testimony given at this hearing, that the defendant Albert Marrone was fully apprised of the intention of counsel to consult and talk with witnesses and not particularly the witnesses who were in Puerto Rico, for the purpose of discrediting the victim Sackman. He was advised of this I believe at the hearing held in Syracuse. He listened to the tapes during the discussion held in the court room with all counsel and defendants present. The names of the witnesses were mentioned and the fact that we intended to offer their testimony to discredit the testimony of Sackman with the hope of affecting his credibility to the extent that the jury would not believe his story.

It is interesting I think to note that

Mr. Welch did indicate yesterday and alluded to the fact when he received word or knew the purpose of the Puerto Rico trip, that he went back to his witness, and I am assuming that the witness was Sackman, and reassessed the witnesses story. To what extent, I don't know, and I don't believe we will ever find out. So that I think that that information, which I might add forms a substantial part of my defense and all the defendants defense have been passed to the United States Attorney, and whatever actions he took on reassessing his witness, I can't say and to what extent and how much of our defense has been prejudiced.

I would like to state in my opinion there has been no question but the defense has been prejudiced, the type of prejudice that can't be rectified by subsequent trial or any method in the present trial to try to justify this position with the position taken in the Caldwell case. I might point out in that situation after communication was had it was brought to the court's attention concerning the alleged spy in the camps of the defense and the matters which the spy set forth in his affidavit, and which the court touched upon at great length. I submit in this case there has been some statement mentioned by the witnesses who testified at this hearing concerning possible unlawful defense benefits. Your Honor is well familiar with what was said. And the court in the Caldwell case indicated that regardless of whether or not there was any prejudice shown any conviction would have to be reversed based upon what was brought out at that hearing.

Then he went on in the footnote that if the defense has been prejudiced to such an extent and nature as to render their subsequent trial unfair, then a motion for judgment of acquittal would be granted.

I submit here Your Honor that the operation of the defense that was given was sifted through by the spy in the camps to the United States Attorney's Office so that operation dealing with the strategy and the method to be employed and the witnesses to be used in attacking the credibility of the

People's chief witness, to wit: the victim Sackman.

I say to Your Honor that I can't state what procedures or steps were taken by the United States Attorney's Office with that witness to bolster his credibility to effectively deter the cross-examination.

I submit there is no way in God's world that we can demonstrate to what extent we have been prejudiced. Suffice it to say that there is no denial but that there is a real and sincere prejudice, which in my opinion can't undo by any other relief and which in my opinion and which I strongly urge Your Honor to entertain and grant our motion for acquittal based upon that.

I believe also the United States Supreme Court in the Salvay case in its dicta seemed to indicate that they seemed to think the conclusions reached in Caldwell and Copeland were proper and they also alluded to the fact that in those situations where the defendant has been prejudiced, it can't be rectified in a new trial.

I appreciate we have not reached that

stage. It would appear to me the type of prejudice I argued to Your Honor is a prejudice which will prevent me from effectively cross-examining this witness, from effectively placing into evidence testimony to attack his credibility which I say to you might well be the deciding factor as to guilt or innocence.

Accordingly I submit, based on that, I respectfully request Your Honor to grant my motion for a judgment of acquittal.

Thank you.

MR. LONGERETTA: Your Honor, I join in the motion by co-counsel, Mr. Manganelli and Mr. Brindisi, but I would request the court at this time, after a review of the cases yesterday and last night, and the reasoning of the Supreme Court, that I at this time be permitted to recall Mr. Ryan for a couple of questions.

THE COURT: I directed you to show me where you learned of any defense that you had here. That is what I directed you to specifically to do.

MR. LONGERETTA: As I indicated, the

defense I had presented and asserted to Your Honor is the defense that Marrone had set up, and he was present, and he presented it to Mr. Ryan and also Mr. Kolevar and ultimately to Mr. Welch. That is the defense.

THE COURT: If you want to recall Mr. Ryan, I am agreeable to that.

MR. LONGERETTA: I do have a couple of questions that I would like to ask him.

THE COURT: All right. Recall him. I take it you join in too, Mr. Scholl?

MR. SCHOLL: May I be heard on behalf of the defendant Zogby. I have attempted to separate the wheat from the chaff to determine in my own mind how we have been prejudiced and what I come up with is that as far as Jack Zogby is concerned, his case rises or falls upon the credibility of Mr. Sackman. Mr. Sackman has identifed Mr. Zogby in one instance. He has seen him. He is going to say that Mr. Zogby was a part of this thing. Our defense is Mr. Sackman is not to be believed. Ninety-five per cent of the defense is simply to destroy Mr. Sackman on cross-examination, and I submit if the

United States Attorney having the information of the path we are going to follow, and having the United States Attorney sit in this room yesterday feeling that he went back to either reassess or re-examine his witness, he has protected Mr. Sackman to undergoing this cross-examination which will have some effect on the destruction of Mr. Sackman on the stand. I submit in that fashion we have been prejudiced and I join in the motion Your Honor.

THE COURT: Bring Mr. Ryan in.

MR. WELCH: Mr. Evans has gone to get him. Do you want him Your Honor?

THE COURT: I don't care to hear you. Bring Mr. Ryan in.

MR. WELCH: If Your Honor will excuse me, I may be able to expedite this.

(At this point Mr. Welch left the court's chambers and then returned).

MR. WELCH: He is on his way over from the F.B.I. Office.

THE COURT: I told you to have Mr. Ryan in the court house.

MR. WELCH: I directed Mr Ryan to appear

this morning.

THE COURT: Where is he now?

MR. WELCH: I have no idea, Your Honor.

THE COURT: Then we have nothing else to do but to wait for the Federal Bureau of Investigation. We will adjourn until Mr. Ryan appears.

MR. WELCH: May I proffer that I might be able to answer Mr. Longeretta's question.

THE COURT: No. I don't think you can, if he wants Mr. Ryan he is entitled to him. I direct you once again under penalty of my throwing this case out of court to have these people available. Is that clear?

MR. WELCH: Yes Your Honor.

THE COURT: What bunglers.

(At this point a recess was taken after which the hearing in chambers was continued).

THE COURT: Mr. Ryan, take the stand. You are still under oath.

THE WITNESS: Yes sir.

JOHN RYAN,

having previously been sworn, resuming the stand, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LONGERETTA:

Q Mr. Ryan, yesterday I believe your testimony indicated that you were advised of the defenses to be presented by the defendant Carl Mazza and you were so advised by the defendant Albert Marrone?

THE COURT: I think you should refresh the witness as to what you are talking about rather than generalities.

BY MR. LONGERETTA:

Q I believe your testimony indicated yesterday that Albert Marrone told you that the defense of Carl Mazza, and this was a suggested defense by him, that his defense would be to try to recover this money for Al Marrone's wife; that Mr. Sackman owed this money to Albert Marrone and his wife was in need of living expenses and asked Carl Mazza if he would contact Mr. Sackman to see if he could obtain the money; is that correct?

A It was not in that context.

Q In essence were you advised of that by Mr. Marrone?

A Words to that effect, but not in that exact context.

Q Being advised of this did you make further investigation to look into these matters presented to you?

A Not in this regard.

Q You take it upon yourself to have a conversation with

Mrs Marrone concerning these allegations?

A No sir.

Q You never contacted Mrs. Marrone when this was brought to your attention regarding this matter?

A No sir.

Q Did you have any conversations with Mr. Sackman regarding any conversation he might have had with Mrs. Marrone?

A No sir.

Q Did you discuss this matter with the United States Attorney, Mr. Welch?

A No sir, I did not.

Q Did you discuss this matter with any other agent in your department and have them investigate the matter for you?

A No sir, not to my knowledge.

Q Are you telling me that this defense was presented to you by the co-defendant, Albert Marrone, and you did nothing on your own to investigate it?

A That is correct.

Q Let me ask you this. Did you believe that this was the truth, the defense presented by Mr. Mazza?

A I have no idea.

Q And you didn't investigate to find out the truth or falsity of it?

A No sir.

Q Do you know whether this defense was presented to Investigator Kolevar

A I don't think it was.

Q You ever discuss the matter with him?

A I don't recall discussing it with anybody.

Q Did you make any writings or requests concerning this defense presented to you?

A Not that I recall.

Q Did you ask Mr. Welch whether or not he had taken up this matter or if any matter was taken up between Sackman and Mrs. Marrone at any time?

A I don't recall exactly.

Q Is it possible that you may have done that?

A I don't think so. I can't recall any such.

Q Did you make any investigation into the defense that was presented to you in behalf of any defendant here?

A No sir.

Q Did you investigate any of the elements presented to you concerning a Puerto Rico trip by Mr. Brindisi?

A No sir.

Q You made no investigation of that?

A No sir.

Q Is it safe to assume that you just took this information made notations or kept it away in your mind somewhere and did nothing more than that with it?

A The particular incident you are talking about I recalled it only yesterday that it even came up.

Q And the incident you are referring to is the one with Carl Mazza?

A Yes sir.

Q And that is the first time that it was brought back to your attention when you heard it from Mr. Marrone?

A Yes.

Q And you only heard it from Mr. Marrone the one time?

A To my knowledge, yes.

Q Relating to the Puerto Rico trip concerning Mr. Sackman, by Mr. Brindisi, did you make any investigation regarding that?

MR. WELCH: Objection.

THE COURT: He has already answered the question once and once is enough. He said no.

BY MR. LONGERETTA:

Q Did you investigate Mr. Lomanto after you learned of his involvement in this matter?

A No sir.

Q Did you have any conversation with John Longo after indictment in this matter?

A No sir.

Q That is in Attica State Prison?

A No sir.

Q You never contacted Mr. John Longo since the date of this indictment?

A No sir.

MR. LONGERETTA: That is all, Your Honor.

THE COURT: Anyone else?

MR. BRINDISI: I have one question.

BY MR. BRINDISI:

Q Since the indictment and the discussions with Mr. Marrone, have you or any members of your agency conducted any electronic surveillance on either the defendants or their attorneys?

A No sir.

Q Any telephone interceptions in any way?

A No sir.

MR. BRINDISI: Thank you.

MR. MANGANELLI: I have no questions, Your Honor.

MR. SCHOLL: No questions.

THE COURT: Any questions?

MR. WELCH: No sir.

THE COURT: You are excused, Mr. Ryan.

THE WITNESS: Thank you sir.

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THE COURT: All right. Do you wish to add anything to the argument you have already made?

MR. LONGERETTA: Only I appreciate the fact that you allowed me to question Mr. Ryan. Just to conclude my motion, I feel that the entire defense of Carl Mazza has been presented to Mr. Ryan and therefore the prosecution, and I have asserted to the Court that this is the defense of Carl Mazza and the total defense of Carl Mazza. And the fact which has been presented is sufficient to warrant some relief from this court appreciating the fact that the relief can't be remand for a new trial. We only could suggest to the court the only relief available would be a judgment of acquittal, and I join in the motion of other counsel.

THE COURT: Do either of you wish to add anything furtner based on this testimony?

MR. MANGANELLI: No Your Honor.

MR. SCHOLL: No Your Honor.

MR. BRINDISI: No Your Honor.

THE COURT: All right.

MR. WELCH: As the testimony reveals. no

defense has been made available to the United States Prosecutor's Office through Mr. Marrone or the F.B.I. Agents to me. The first I heard of this plan of Mr. Mazza to take the witness stand to say that Mr Marrone or his wife had told him to collect this money was when I heard it from the witnesses in the leading questions of defense counsel. Mr. Ryan indicated that he heard this from Mr. Marrone, but there is no question at all in my opinion which would justify that he discarded it as idle talk.

The other matter in regard to the Puerto Rico trip, I learned about number 1, that Mr. Brindisi was out of town, was in another court matter and that he was in Puerto Rico. The next day when we appeared in court for discovery arguments he said he would like to request the prosecutor to explain the situation to this court, and at that point it was clear Mr. Brindisi had attempted to obtain witnesses in Puerto Rico. In addition, it is most obvious that they were going to attack the credibility of

Sackman and if Mr. Marrone had indicated something to that effect it was certainly not revealing of any defense or cooperation. I think this comes directly in the position of Fifth Circuit case of the District Court and indicating where there was no intrusion in the defense camp, it was not violative of the Sixth Amendment right of counsel, but if there was such intrusion the court was to disclose that information to defense counsel and order a new trial.

We find ourselves in the situation where this motion is now brought before the trial. Any disclosure that is necessary has been made through this hearing ordered by Your Honor. The defense is now in the same position as the Zoya case. The Caldwell case indicates that retrial is directed unless the attorneys can't meet their burden to show a fair trial and the attorneys in this case have not made that burden and we request the court to deny the motions.

THE COURT: The court denies the motions.

MR. BRINDISI: I have one additional motion and that is based upon the submission to you of 3501. I would like to know from the court whether or not-- I don't want to get into the matters contained in 3501-- whether or not they apply to the defendants in this matter.

THE COURT: I think you have at this point no right to examine 3501.

MR. BRINDISI: I don't want to examine it. What I am trying to say is I don't know whether or not there is anything in 3501 which is prejudicial to the rights of the defendant King in obtaining a fair trial from this court based upon some prejudice which this court might have after reading 3501.

THE COURT: That is frivilous, totally frivilous. It is within the court's province to examine matters in camera so there won't be any prejudice.

MR. WELCH: While defense counsel are conferring, Mr. Ryan has requested permission to substitute a Xerox copy of the document you sealed yesterday, so the court can reseal it and he can return the original documents. This is a carbon copy---

THE COURT: He assured me he had other

copies before I sealed it.

MR. WELCH: It is that particular copy that has various slips and things making up the original for his file that he must retain for his regulations.

THE COURT: Then he should have told the court that before I sealed it. His regulation will have to defer to the rules of the court.

All right, let's go out and proceed with this trial.

(The following proceedings took place in court with the prospective jurors and spectators present, all defendants and their counsel were present as was the Assistant United States Attorney).

THE COURT: Call the case.

THE CLERK: United States of America vs. Louis Charles King, Jr., James Vincent Talerico, Jack Zogby and Carl J. Mazza, 72-CR-293. Both sides ready?

MR. WELCH: The United States is ready, Your Honor.

MR. BRINDISI: Defendant King is ready.

MR. MANGANELLI: Defendant Talerico is

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peremptory on the alternates?

MR. BRINDISI: That is correct.

THE COURT: All right. Swear the jurors.

(At this point the jurors were sworn).

THE COURT: The court sequesters this jury at this time and they will be in the care and custody of the Marshals throughout the trial. Take them to lunch. Return at 2:15.

(At this point the jury retired from the court room at which a luncheon recess was taken until 2:15 P.M., of the same day).

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AFTERNOON SESSION

APPEARANCES: Same as morning session.

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(2:26 P.M. in Chambers)

MR. BRINDISI: Your Honor, if the court please, I discussed this matter with all the counsel for the various defendants. We would like to request of the court that this not be a public trial and the reason for the request is at one time there was a rumor circulating that the co-defendant Marrone might have been passed a gun and he was going to use it in the court room. Mr. Marrone's family in strength are sitting in the court room at the present time. I think there are five or six there. I don't know if they were searched or something might happen in the court room, that might cause harm to both the court, the attorneys and also our clients. We have no proof that Marrone will be allowed in the court room during the course of the trial, but he made a statement to the newspaper reporter and for the protection of the court, the defendants and attorneys, and not knowing whether someone will be shot in the middle of the trial, we decided to ask the court not to have a public trial, and this is with the consent of all defendants.

THE COURT: What do you say?

MR. WELCH: We have no objection, Your Honor. If the defendants are advised by Your Honor the right to a public trial and waive it on the record.

THE COURT: I am not sure that they can. There was a case quite recently in the New York Courts on this very point.

MR. BRINDISI: I think in that case they were trying to keep the newspaper reporters out of the court room.

THE COURT: No. They had newspaper reporters there. That was a case where precisely the same motion you are now making was made. It wasn't in a Federal Court. It was in the State Court. I will have to reserve on it. In the meantime the court has ordered that all spectators be searched in view of what you said yesterday about threats on your life, Mr. Brindisi.

MR. MANGANELLI: I might add I happened to observe the Marshal searching people going into the court room.

THE COURT: Yes I know he is searching them. Meantime I will reserve until I have had an opportunity to look at some law unless somebody can help me.

MR. WELCH: Do you want a continuance, Your Honor?

THE COURT: I don't want a continuance. We have a sequestered jury. I am in favor of rolling along.

MR. BRINDISI: I was under the impression that the defendant could waive his right.

THE COURT: I am not sure, but I do know the point came up and it went as high as the Court of Appeals. It may even have gone to the Supreme Court. My off-hand opinion is that he can waive any right providing he does so knowingly and intelligently.

MR. BRINDISI: We have an additional problem because of these people being present in the court room. The court is aware and the U. S. Attorney's Office is aware that part of the defense in this case is that the money came from Al Marrone and these people on the outside hearing this kind of testimony could take matters in their own hands and make attempts on the lives of not only the attorneys but the defendants who are in court.

THE COURT: If you can give me any concrete instance of where there is any tangible threat.

MR. BRINDISI: Could I hand you something in camera?

THE COURT: With the United States Attorney's permission you may and with the permission of other defense counsel. Does anybody object?

MR. SCHOLL: I have no objection.

MR. MANGANELLI: I have no objection.

MR. LONGERETTA: No objection.

MR. BRINDISI: Your Honor, I do not have a copy of this document to hand to the court, but this is a letter from Al Marrone.

MR. WELCH: I would like to note that this is Derry's client and only Mr. Marrone can have this right.

MR. BRINDISI: It has nothing to do with the attorney-client relationship.

THE COURT: Do you mind if Mr. Evans photostats this?

MR. BRINDISI: I do not, Your Honor.

THE COURT: Photostat this Mr. Evans. Let me check some law. I will reserve on it for the moment.

(At this point discussion was held between court and counsel, which the reporter was asked not to take).

MR. BRINDISI: May we be excused?

THE COURT: Yes.

(Whereupon at this point the counsel left the chambers. At 3:15 P.M., the following occurred in chambers with all counsel present).

THE COURT: I just called you in to see whether anybody here in Utica has a supplement. What I have is the citation. It is 246 N.Y. Supplement, 190. I don't have the books here. I think that is the case.

MR. BRINDISI: Could we call the library at the court house and have them read the case to us or send it down?

THE COURT: Just have somebody check the footnote to see if it involves this point. That may be it or it may be 257 New York Supp., 311.

MR. WELCH: We have New York Supp., in our library in Syracuse, New York, Your Honor.

THE COURT: Well whichever is the quicker.

MR. BRINDISI: We can get it at the court house.

THE COURT: All right Mr. Evans, mark this as Court Exhibit 1.

(Letter previously referred to by Mr. Brindisi marked as Court's Exhibit #1 in evidence).

(At this point the counsel left the courts chambers and the following occurred in open court).

THE COURT: Make the announcement Jim.

THE CLERK: Any spectators are advised that unless they desire to remain throughout the afternoon of the trial, they should leave now because they are not permitted to leave or go in and out of the court room during the trial or when the court is in session except during recess when you will be able to leave the court. If you have any feeling that you might have to leave before that you should leave now because you will not be able to leave until the court takes a recess until the end of the day.

THE COURT: All right, bring in the jury.

(At this point the jury was returned to the court room).

THE COURT: I am sorry for any delay or inconvenience you may have been caused but we have had problems all during your lunch time. We will see that doesn't happen again. From time to time throughout the trial it may be necessary for you to take short recesses while the court and the lawyers work on legal problems that don't concern you. You can rest while we are working.

All right, proceed.

MR. WELCH: May it please the court, ladies and gentlemen of the jury. My name is Eugene Welch and I am an Assistant United

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loan and that there was an illegal conspiracy to collect that loan. We ask you to listen very carefully to that testimony and the evidence that we adduce here, to keep in mind that some statements that initially may appear to you to be innocent to consider from the point of view of Mr. Sackman in his situation they are very threatening. Certainly those statements made which had a knife pointed at him or a gun pointed at him are clearly threatening.

This is the last time I will talk directly to you until my closing statement after all the evidence is in, but I expect the evidence will speak very clearly to you. We will ask you to return a verdict of guilty as charged against each one of these four defendants. Thank you.

THE COURT: Open in the order in which your clients are named.

MR. BRINDISI: Yes sir. If the court please, Mr. Prosecutor, ladies and gentlemen of the jury.

As some of you know, I tried a case last week and some of you were on the jury that I had. My name is Louis Brindisi and I am appearing for the defendant, Louis Charles King, Jr., seated next to me at counsel table. Also you heard when I addressed the jury last week in my opening statement, this is the kind of a trial in which the defendant is supposed to come before you and tell you what they expect to prove through evidence that will be brought by the witnesses who will testify during the course of this proceeding.

I want to thank you first, every one of you, for your patience. I know waiting out in the other room sometimes your patience would reach its limitations, but things did occur that were legal matters that could not be brought before the jury and we were just not wasting time, and finally disposed of those problems and from here on in we will try to present the case to you as quickly as possible so you won't be sequestered quite that long. I think you all know within the next few days you will be living with one another. You will under the care of the Marshals. You will eat together and they will have private rooms for you until such time as the evidence is presented and you have heard the charge of the court. Then you will go into your deliberations and remain until such time as you come back with the verdict. As I indicated last week this is why you are here to bring back a verdict. This morning when you walked in you were individuals. At 12:30 when you were sworn you became a jury and you are a very powerful body because you and you alone can only determine what the true facts are in this case. You and you alone can determine the credibility of the witnesses who testify during the trial. And you alone can decide what the facts are in this case. Neither I nor the court or the prosecuting attorneys can take away from you that obligation. So I ask you not to make any judgments. It is not fair. You are to sit here and listen to the testimony of all the witnesses both for the prosecution and for the defendants. At such time when you hear all the testimony and all the proof is in and all sides have closed their arguments and until you have heard the law as given to you by the court, then and only then can you go into deliberation and determine whether or not the defendants are guilty or innocent.

Now that is a very important function. You are here to do justice and the only way justice can be accomplished is for you to listen to all the testimony, judge the witnesses as they appear on the witness stand, look at them and find out whether they have a motive for testifying, what they are testifying to and judge by whether you believe them or don't believe them. Mr. Welch gave you a story of intrigue and I think you will find that to be the truth at least insofar as these defendants, at least insofar as the defendant Louis King is concerned. I think the judge will charge you at the end of the case that you are to consider the guilt or innocence of each defendant individually. You have to determine whether Louis King is guilty, whether or not Carl Mazza is guilty; whether or not James Talerico is guilty and all the way down the line.

And as the judge told you when you were selected, they have around them a cloak, and that cloak is the presumption of innocence and you must give them that presumption until such time as proof is presented to you by the prosecution as to their guilt beyond a reasonable doubt.

I am not going to get into the law and tell you what reasonable doubt means. That is the function of the court. His sole function is to rule on questions of law. Your sole function is to determine the facts. He can't invade your province as triers of the facts.

THE COURT: Please Mr. Brindisi, you are invading mine at the moment.

MR. BRINDISI: I am sorry, Your Honor.

THE COURT: Tell them what you expect to prove. Leave the law to me.

MR. BRINDISI: The judge as I said will tell you what the law is and I apologize to the court if I entered into his domain. As you see if I do it doesn't take too long for me to be stopped in that direction.

The proof will be that J. Schuyler Sackman was in what they call a mortgage finding type of business. He went out looking for deals. The proof will be in the year 1971 he filed bankruptcy in the District Court in the Northern District of New York, this particular district, owing the sum of $259,028. Out of that sum he had some $91,000.00, which he had from personal loans from advances which he got from people. He would come up and say, "I got the people. I can make you so much money and I need what they call front money." You will hear the word "front money" used continually throughout this trial.

We will prove to you through cross-examination and through witnesses which we intend to call that Sackman had this type of business continuously and he was one of the best you would ever find in the business. He fleeced people out of their money. There came a time when he entered into negotiations to handle some kind of a business transaction with the defendant Louis King. He also tried to enter into some negotations with the defendant Albert Marrone, and what I am telling you now is what I expect to prove during the course of this trial. And in order to complete the transaction with Albert Marrone he needed $4,000.00, and this $4,000.00 was his front money. He stated at that time he needed this money to clear up his financial obligations at home; his wife was on his back and he needed money so he could on some ventures overseas. He had real estate transactions in Spain and Switzerland and you will hear all of us when you hear the cross-examination of Mr. Sackman.

Now, this front money was not given to him in any extortionate way. It was given to him so he could clear his financial problems, so he could pay his personal bills off and be able to go through with the transactions he promised he would go through with. Those transactions did not happen as most of Mr. Sackman's transactions did not happen. He got the money and did nothing about what he promised to do, and we will prove to you that he did this in Puerto Rico with individuals where he was going to build a hospital and he fleeced a lawyer and doctor down there of $26,000.00, which they gave as the front money and he was never seen after that.

We will prove to you that he saw people in Utica named LaCompo, and this man LaCompo used to be in the Attorney'General's Office, and this was a decent individual, and he said to these people, LaCompo, who had a son in Viet Nam, he told them, "I can get your son out of Viet Nam. It will cost you $18,000.00." These people gave him $3,000.00. That is the last time they saw Mr. Sackman.

THE COURT: Mr. Brindisi, will you come to the bench please.

MR. BRINDISI: Yes sir.

(The following discussion took place between the court and Mr. Brindisi outside the hearing of the jury).

THE COURT: That line of proof is totally immaterial and inadmissible.

MR. BRINDISI: I think it goes to the credibility of the witness.

THE COURT: It doesn't show any acts of misconduct which resulted in a felony. Read United States vs. Prowse.

MR. BRINDISI: Is it my understanding that

I can't get into transactions similar to the nature of this proof?

THE COURT: I am not laying down any general rule, but it is not admissible.

(The following took place in open court before the jury).

MR. BRINDISI: (continuing) After you hear the cross-examination you will hear evidence that after this $4,000.00 was loaned the defendant Albert Marrone was imprisoned in the State of Florida for some violation and that Sackman did not pay back this money to Albert Marrone. Soon thereafter Sackman came to King who had negotiated previously on another transaction and told him some force had been tried to be used upon him to collect this money back. King knew Marrone.

Marrone you heard will not be tried in this case but at a later time. Sackman requested King to intercede on his behalf of Marrone.

Now whether or not Sackman at some point was threatened I do not know. You will have to listen to the testimony elicited from the witness stand. But Mr. King in no way ever threatened him to get back this money.

We will prove to you that there was no extortionate extension of credit. It was this front money that they were talking about.

So Sackman goes to King and pleads to King to intercede on his behalf with Marrone and the other people who are supposed to be connected with Marrone.

There comes a time when Sackman, because he doesn't want to pay debts that he owes, goes to the Federal Bureau of Investigation and tells them a story that he had in some way been threatened and that this money was to come back and paid in an extortionate way.

So he starts working along with the F.B.I., and they put on him a bug, a recording device and they say, "O.K., go out and talk to these people and record the conversations that you have with them." And those conversations were recorded starting somewheres in November 1972. I think it was November 11, if I am not mistaken.

Now in listening to those tapes you will find so far as the defendant King is concerned, he had no idea that these conversations were being recorded. And in those conversations you will hear him, King say, "I had nothing to do with this, you got yourself involved. I had nothing to do with this whatever."

Listen to all the testimony, take into consideration the evidence that will be produced by both the prosecution and the defendants, listen and judge. It is up to you to decide the credibility of what actually took place in the month of September, October, November, December 1972.

After you have heard all the evidence, I again plead with you to please keep an open mind. Don't make any decisions until you hear the entire testimony. At that time after you have heard all the evidence, then the judge will charge you that the defendants don't have to offer proof to satisfy you as to their innocence. We will present their evidence to you. We want you to hear both sides of the story. That is why I ask you to keep an open mind. And then you can judge whether or not to bring back a verdict of acquittal on behalf of the defendant.

Opening Statement by Mr. Manganelli (Talerico's Attorney).

MR. MANGANELLI: May it please Your Honor, the court, Mr. Welch, fellow colleagues, ladies and gentlemen of the jury. My name is Joseph Manganelli. I am an attorney in the City of Utica, New York, and represent the defendant, James Talerico, who is the gentleman seated next to me.

As mentioned is his opening the United States Assistant Attorney, James Talerico has been accused by this indictment in the fourth count and in Count 7.

Count 4 as the United States Attorney indicated to you substantially charges that James Talerico willfully and knowingly did participate along with the defendant Louis King in the use of extortionate means to collect from J. Schuyler Sackman an extension of credit.

In that opening of the United States Attorney and in going through these various counts, he indicated to you that James Talerico allegedly told J. Schuyler Sackman in substance, "Do you know what has happened to other people in the past that don't pay their debts."

I call particular attention to you ladies and gentlemen that this is the only allegation of any threat or any means of a threat, any means of violence that the government has said that my client, Mr. Talerico had made towards Mr. Sackman.

And in the seventh count of the indictment, my client, Talerico, with other named defendants, including the defendant not present in this court room, has been charged with a conspiracy to violate that section. It has been charged that they tried by unlawful means or lawful means with all the other defendants to gain an unlawful purpose, to wit: to participate by the use of extortionate means, by the use of threat, violence against the person and property of J. Schuyler Sackman, for the purpose of collecting this alleged extortionate loan, which was made allegedly on September 18, 1972.

Now on behalf of the defendant Talerico, we intend to prove to you ladies and gentlemen that J. Schuyler Sackman was an acquaintance of Mr. Talerico. At least as far as Mr. Talerico was concerned he was presumed to be a friend of his. That he had known him over six years. That he had met him on several occasions and been in each other's company many times before the 18th of September, 1972.

Now I don't want to be repititious with you ladies and gentlemen, but we will prove that Mr. Talerico did not know on the 18th day of September, 1972, did not have any knowledge about any alleged loan; did not know any circumstances when the loan was made, who received the money or anything. The testimony will be I am sure developed that it was not until the early part of November, I believe the week of the 6th of November, that Mr. Talerico did find out about the alleged loan being made. I call your particular attention to this ladies and gentlemen, it is my client's position he ascertained about this loan from Mr. Sackman himself, and that he learned Mr. Sackman allegedly borrowed some money from some person or persons. The testimony will further show that Mr. Sackman asked Mr.

Talerico what he thought of this person from whom he borrowed this money, and Mr. Talerico being a friend of his offered his opinion and his ideas on the person who allegedly made the loan to him. Mr. Talerico was not there when the loan was made. The evidence will further demonstrate that shortly thereafter on the 11th of November, Mr. Sackman called Mr. Talerico from Syracuse on the telephone and in the conversation there was some allegation to the effect that Mr. Talerico knows he has to meet the obligation two days later. This is the only pertinent part of that conversation, which by the way was recorded.

The testimony will further show that on the 13th of November, my client in fact was present at the time that Mr. Sackman allegedly turned over the sum of $350.00 to Mr. Louis King. It was turned over to Mr. King in the presence of my client in the body shop at Whitesboro. This testimony will come out. It also turned out that this money was given to Mr. King to hand over to Al Marrone's wife. My client did not receive any money. My client will testify that no threats were made to Mr. Sackman in his presence by himself or anyone else.

Then we will show by credible evidence from then until the 30th of November, my client didn't talk or see or hear from or hear of Mr. Sackman, and it was not until the 30th of November, a Thursday evening when there was a storm in the City of Utica and central New York that he received a telephone call from his alleged friend in Syracuse, that he had to want the help of Talerico to convey a message to Mr. King regarding a meeting the next day. The evidence will clearly indicate my client told him, "I can't leave the house tonight. It is very bad out." Further testimony will show that Mr. Sackman kept insisting, "Please help me. Try to get this message to him." And Mr. Talerico said if he saw him he would suggest that he call Mr. King the following day. This is the last conversation that this defendant Talerico had with King and on the 1st of December my client was arrested by the members of the Federal Bureau of Investigation and charged with the commission of the crime for which he is being tried today.

Ladies and gentlemen, my client prominently asserts his innocence of the charge he is being tried on. I ask you on his behalf to pay particular attention to the evidence adduced at this trial, to pay careful attention to all the evidence and at the conclusion of that, after the court's charge, I am sure you will follow the court's charge as to the law, I will then have an opportunity to address you information for the purpose of asking you to find a verdict of not guilty as far as the defendant James Talerico is concerned. Thank you very much.

MR. SCHOLL: May it please the court, Mr. Welch, co-counsel, ladies and gentlemen of the jury.

My name is John Scholl. I have been assigned to represent the defendant Jack Zogby in this case. Mr. Zogby has been charged in two counts of the indictment as has been mentioned to you by Mr. Welch. Both of those counts deal with one incident, one date, which is alleged to be incident of Mr. Zogby's participation in this whole affair.

Realize ladies and gentlemen that there are two sides to every story. I am sure you are aware of that. You heard one side of it and you are hearing the other side of it as the evidence comes in as we make our opening remarks.

Now what Mr. Welch said to you, I am sure he believed to be the truth and I can assure you that what I am saying to you now I believe to be the truth. And what he says differs from what I say and that creates an issue of fact that you will have to decide. Please don't jump to any conclusions. Wait until the evidence is in before you decide the case. Listen to the witnesses. Observe them. You may hear witnesses from the prosecution's side who are members of officialdom. They have titles. Members of the Federal Bureau of Investigation. Mr. Welch has a title. He is an Assistant United States Attorney. I have another title. My witnesses will not have titles and

I ask you please don't give any more weight to their testimony simply because they are members of governmental agencies. They make mistakes just as you and I do. Listen to the evidence. Weigh their manner and demeanor on the stand.

As I mentioned to you my client, Jack Zogby, his whole participation in this matter allegedly surrounds the date of October 30, 1972. He is accused of threatening Mr. Sackman, the alleged victim in this case with a knife, to attempt to get him to repay the money. That is the only date, the only time in which my client is allegedly involved in the case.

There will be a question of identification, as to whether or not Mr. Zogby was in fact the man who threatened Mr. Sackman, if anyone did threaten him. So it will be important for you to weigh the testimony of Mr. Sackman because it boils down, goes to the issue of his word against the word of Mr. Zogby.

Now we will prove to you by witnesses that Mr. Zogby was not in any way near the scene of the alleged threats on October 30th and was in fact someplace else, and we will have witnesses to prove that to you.

You understand what I am saying and what Mr. Welch has said doesn't constitute evidence in this case. The evidence comes from the witness stand. You must listen to the evidence, weigh it carefully and then make your decision.

It is simply a question of whether or not, as far as Mr. Zogby is concerned, he was there on the one occasion, on October 30th, or he wasn't.

He has denied his guilt. He still denies his guilt today and he sits there right now innocent, presumed innocent by law. The People must prove that he is guilty beyond a reasonable doubt, and I submit to you ladies and gentlemen that as this case unfolds, as the evidence comes in, a reasonable doubt will be created in your mind which will compel you to render a verdict of not guilty.

Thank you very much.

MR. LONGERETTA: May it please the court, ladies and gentlemen of the jury. My name is John Longeretta. I practice law in the City of Utica and I represent Carl Mazza seated at the corner of the table.

Mr. Mazza appears here charged with two counts, one count being a conspiracy along with other co-defendants to extortionately collect an extension of credit, and the other count, Count 6, charges him with particular acts that he performed in attempting to collect this loan we are talking about.

Now Mr. Welch has presented to you what he intends to prove and has more or less laid out his case, and I am not sure, as has been done through co-counsel, that an extortionate loan was made. I believe that he won't be able to do that and as the resulting facts will bear out, and the evidence unfolds, you will see perhaps Mr. Mazza was involved in one incident.

The entire transactions commenced on September 1972 and extended into the month of December. Throughout that period of time Mr. Mazza was involved in one incident and this will be very clear to you from the evidence presented from the stand. But what I am going to point out to you at this time, I want you to take a look at the picture of what Mr. Mazza was involved with and had nothing to do with the entire occurrence which will be attempted to be presented to you by Mr. Welch. What Mr. Mazza was doing was an act of friendship. He was called upon by a friend sometime after the supposed alleged loan took place and he was asked by a friend to see an individual, that individual being Mr. Sackman, who owes my husband some money, the husband being Mr. Albert Marrone. Here is a woman attempting to get support for herself and her children. The money was due from Schuyler Sackman. She asked Mr. Mazza, who had been a long time friend of herself and Mr. Marrone, to contact this individual and see if he can repay some of the money he owes so I can support myself and my children.

He was advised by Mr. King that he could speak with Mr. Sackman. That occurred on November 18, 1972. Arrangements were made and Mr. King here, and Mr. Mazza met Mr. Sackman and there was possibly a display of emotions. Here is a woman and children. They are destitute and he asked Sackman to please give them the money you owe. This was a meeting with the alleged victim Sackman and here he is charged with participation in the extortionate extension of credit.

Mr. Mazza knew nothing of this. He was not involved with any of these people at all and knew nothing about the extension of credit given by the two other individuals. All he knew was that this woman needed some money. The proof will come out in such a way, and this is what is going to happen. He didn't willfully and knowingly as charged in this indictment extortionately try to collect money from Mr. Sackman, which was loaned to him in some manner that he knows nothing about.

It is going to mean a great deal to Mr. Mazza when you sit down and decide what the truth is from the evidence on that stand. I can't impress any more upon you the fact that the one incident that Mr. Mazza was involved in was on November 18. He had no connection with the parties involved. He knew nothing about the loan. The defense he will present is the truth and we ask you to believe this individual who is being charged here and I am sure you will see that he is in no way guilty of the charges against him.

I ask you to keep an open mind. Listen to all the evidence. Frame him with a cloak of innocence as was brought out by the other counsel, and when this case is over I am sure he will leave with the cloak of innocence still around him. You will see from all the evidence that all Carl Mazza is involved with is trying to do something for a friend.

As lawyers we sometimes get carried away to some extent, but the case is not criminal as Mr. Welch will ask you to believe. He was involved with an act of friendship and not a criminal act. I ask you to keep this in mind.

THE COURT: Proceed.

MR. WELCH: The United States calls Mr. J. Schuyler Sackman.

J. SCHUYLER SACKMAN

called as a witness in behalf of the Government, being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Now Mr. Sackman, keeping your voice up so the Court Reporter can hear you and the Jury can hear you and the defendants can hear you, will you tell us your name and address and your age? What is your address?

A 217 East Genesee Parkway, Syracuse, New York.

Q How old are you Mr. Sackman?

A I am forty years old.

Q What is your employment Mr. Sackman?

A I am an insurance agent and mortgage broker.

Q Could you tell the ladies and gentlemen of the jury what you do as a mortgage broker?

A I arrange for people who need money for factories, offices, homes, I arrange to set up a mortgage for them through a bank or insurance company or personal people.

Q What is your background education?

A I went through public school, high school, and have a degree from Long Island University.

Q What is your physical condition?

A Good.

Q Is your eyesight good?

A Yes sir.

Q Have you had any recent illnesses?

A I wouldn't say so.

Q Did you have any previous illnesses during the time September 18, 1972 and December 1st. 1972?

A No sir.

Q Or very recently before that?

A No sir.

Q Were your eyes good then?

A Yes sir.

Q Do you know a Mr. Louis Charles King, Jr?

A Yes sir I do.

Q Do you see Mr. King in this courtroom today?

A Yes sir.

Q Where is he?

A Mr. King is the second gentleman on the right with the brown light tie with a sports jacket on.

THE COURT: Let the record reflect he has identified the defendant King.

BY MR. WELCH:

Q Do you know Mr. Albert J. Marrone?

A Yes I do.

Q Do you know a Mr. James Talarico?

A Yes I do.

Q Do you see Mr. Talerico in the courtroom today?

A Yes sir. He is the fourth gentleman from the right going across the room as it were in the white shirt.

THE COURT: Let the record reflect he identified the defendant Talerico.

BY MR. WELCH:

Q For approximately how long have you known Mr. Louis King?

A Approximately two years. Approximately two years.

Q You knew Mr. King on September 18, 1972?

A Yes I did.

Q Approximately how long have you known Albert J. Marrone?

A I met him sometime between August and the end of September 1972.

Q Did you meet him prior to September 18, 1972?

A A couple of times.

Q Approximately how long have you known James Vincent Talerico?

A I know Jim approximately three years. It might be a little less than three years.

THE COURT: Keep your voice up.

THE WITNESS: I am sorry Your Honor.

I know him approximately three years.

Q On September 18, 1972 were you engaged in any business transactions with Mr. Louis Charles King, any transactions at all involving financial affairs? What was your relation with Mr. King at that time?

MR. BRINDISI: May I have the date?

THE COURT: You have any transactions with Mr. King on September 18, 1972. Bring it up into that.

THE WITNESS: Yes. On September 18, 1972 I borrowed $4,000.00 from Mr. King and Mr. Marrone.

BY MR. WELCH:

Q Specifically whom did you take that money from?

A I physically took the money from Mr. Marrone.

Q Was it-- describe what took place on September 18th?

A I met with Louis King earlier in the afternoon at his home. It might have been late afternoon. 5:30, 6 o'clock. And we visited for awhile there. Then I left and then I came back to his home again, earlier in the afternoon, and he had me follow him, he was driving his Corvette, to the Ramada Inn, which is on the outskirts of Utica. We went into the Ramada Inn, into the bar and grill portion, and Mr. King and myself had a couple of drinks. We were waiting for Mr. Marrone to come into the Ramada Inn to meet us for this meeting, at approximately 7:30, 8 o'clock.

Q Had you asked Mr. King and Mr. Marrone to meet you there?

A Mr. King asked me to meet at his home earlier, so we might meet with Mr. Marrone later for the purpose of letting me have $4,000.00.

Q For the purpose of who letting you have $4,000.00?

A Mr. King and Mr. Marrone.

THE COURT: Give us the conversation. How were you to get the $4,000.00.

THE WITNESS: I had done some work earlier in the month. Mr. King and Mr. Marrone had asked me to go to Florida fo them on a purchase---

THE COURT: I am not concerned with that.

THE WITNESS: Well this is how it started Your Honor.

THE COURT: Just the conversation about the loan.

THE WITNESS: About the loan?

THE COURT: Yes.

THE WITNESS: I needed $4,000.00 to pay off some of my personal bills so I would be able to continue working---

THE COURT: Just tell us the conversation. What did you say and what did anybody else say.

THE WITNESS: I said I needed to borrow $4,000.00.

THE COURT: Who did you say that to?

THE WITNESS: Mr. King.

THE COURT: Was anybody else present?

THE WITNESS: Not the first time.

THE COURT: What did he say?

THE WITNESS: He said he would try to arrange it for me and he at my visits with Mr. Marrone-- I came back from Florida, he would arrange for me to have a $4,000.00 loan. I was to pick it up at the Ramada Inn with Mr. King, who physically took me over. We waited at the bar for Mr. Marrone to show up, and then I didn't see this because I was sitting with my back toward the doorway, but Mr. King got a signal from someone who I assume was Mr. Marrone.

MR. BRINDISI: We object to that.

THE COURT: Yes. Strike it out.

THE WITNESS: Mr. King got a signal. He went out. He asked me to sit there for a minute and then come out. I waited a minute or two and I came out and he and Mr. Marrone were sitting in the lobby area of the motel close to me and talking. And he said to follow him, and we started to walk to what I thought was a hotel room. We were going through a maze of hallways and the two of them were close together talking, and I was behind them. We finally came to a side entrance and we went outside, and Al Marrone's black Cadillac was there. I got in the back seat. Mr. Marrone got in the driver's seat and Mr. King was in the passenger's side. Mr. Marrone took an envelop out of his pocket and handed me an envelop and said, "Here is the money you want." I didn't look into the envelop. At that time they told me the money had to be returned in one month.

MR. BRINDISI: I object to that.

THE COURT: Yes, strike it out. Who said what?

THE WITNESS: Mr. King said the loan was for $5,000.00. I had to pay $1,000.00 interest with the $4,000.00. And Mr. Marrone said "Do you understand that?" And I said "I do."

THE COURT: What else was said?

THE WITNESS: They warned me if I didn t

have the money---

THE COURT: Not "they", who?

THE WITNESS: Mr. King asked if I was sure I would be able to repay the money and I said I was sure I could repay it. The first time I said I was pretty sure, and Mr. Marrone got angry when I said "pretty sure" and Mr. Marrone said "you better make sure you can pay it."

THE COURT: What else was said?

THE WITNESS: I then put the money into my pocket and I left and went back to my own car.

THE COURT: Was anything else said?

THE WITNESS: As near as I can recollect, that is the sum and substance of the conversation at that time.

BY MR. WELCH:

Q Did Mr. Marrone ask you or tell you anything about interest on that loan?

A He said the same thing Mr. King said, that the interest would be $1,000.00 for one month. He said I had to pay $5,000.00 for the $4,000.00 loan.

Q Was that specifically how he put it to you?

A I believe that is how he put it to me, that I would have to pay five back for the four.

THE COURT: Was anything said about having to pay it?

THE WITNESS: Yes, he said I must pay it back on time.

THE COURT: Or what?

THE WITNESS: Or I would be in trouble. And I said I would have it back on time.

MR. WELCH: May I have this marked.

(Envelop marked as Government's Exhibit Number 1 for identification).

BY MR. WELCH:

Q Now Mr. Sackman you testified that the money was in the white envelop?

A Yes sir.

Q When did you first determine that there was money in that envelop?

A When I got back to Syracuse.

Q And what was the nature of the money? What were the denominations?

A They were one hundred dollar bills. There was $5,000.00 in one hundred dollar bills.

Q What did you do with the envelop?

A I marked down the serial numbers of the bills I received on the outside of the envelop, and then I turned it over to Mr. Kolevar of the Federal Bureau of Investigation.

Q On what date did you turn it over to Mr. Kolevar? Was it on September 18th?

A No, I believe it was the next day, because September 18th was a Jewish holiday and I got home late from this meeting. I called and told him I had the money and gave him the envelop the next day.

Q I show you what has been marked Government's Exhibit 1 for identification and ask you to tell the ladies and gentlemen of the jury what that is?

A This is the envelop the money was in and in my handwriting is the bills listed here. These are the serial numbers of the bills.

MR. WELCH: I offer it.

MR. BRINDISI: Your Honor, I have no objection to the envelop going in, but I do object to what is written around it.

THE COURT: Anyone else have any objection? If you get up and look at this, we can save a lot of time, if all of you look at it at once.

MR. LONGERETTA: No objection to the envelop itself. There appears to be something inside. The objection will be to whatever it contains and whatever is surrounding it.

THE COURT: Let me see it.

(Mr. Welch hands Government's Exhibit Number 1 for identification to the Court).

THE COURT: Are you referring to all this red stuff?

MR. LONGERETTA: Also there appears to be something inside the envelop Your Honor.

THE COURT: I will sustain the objection as to all this red stuff on the outside, the mutilation of the evidence. Clean it up and substitute a clean photostat.

MR. WELCH: Subject to Your Honor's ruling the United States moves this into evidence.

THE COURT: I will take it subject to your substituting a photostat without the objectionable material.

MR. WELCH: Thank you Your Honor.

THE CLERK: Government's Exhibit Number 1 in evidence.

(Government's Exhibit Number 1 for identification received in evidence).

BY MR. WELCH:

Q Mr. Sackman, prior to September 18, 1972, did you have any dealings with Mr. King in regards to the collection of other loans?

A I had one experience with him in regard to the collectio of money.

Q What was that experience?

A I had a client by the name of John Longo.

MR. BRANDISI: I object to this, under this particular section I don't think I am anticipating, but it must be in the affidavit that Mr. Sackman made in order to get that kind of evidence in.

THE COURT: Overruled.

MR. WELCH: You may answer the question Mr. Sackman.

A Thank you sir. I owed some money to John Longo on which Attorney John Longeretta had the collateral, and I did not have the money to take him the day it was promised for repayment, so I went down to see John about it, and he said somebody wanted to see me, and Mr. King told me I had to have the money because Mr. Longo owed it to some people, I don't know who he was talking about at the time, and I didn't have the money and he smacked me around in the office, on Bleecker Street that Mr. Longo had I believe, and striking me he told me that I better have that money or else.

THE COURT: Who told you?

THE WITNESS: Mr. King.

THE COURT: Who struck you?

THE WITNESS: Mr. King struck me. He said I better have the money. So I got the money together and I paid it to Mr. Longo and I assume he paid it to whoever he owed it to.

MR. BRINDISI: I object to that he assumed.

THE COURT: Strike it. I will tell the jury that this evidence is admissible for what value you wish to give it as to Mr. Sackman's state of mind at the time he borrowed the $4,000.00 on September 18, 1972.

BY MR. WELCH:

Q Mr. Sackman, on September 18th, did you plan to pay that money back?

A I certainly did.

Q Can you tell us why you did not borrow the money from a bank?

A I went bankrupt in November 1971, as a result of my business dealings with Mr. Longo, and I was not able to borrow money from a bank.

Q On September 18th did you discuss this loan with Mr. King other than what you just testified to? Did Mr.

King tell you where the money was coming from?

A No he did not.

Q Did you know at this time where the money was coming from?

A No. I just thought it was coming from---

MR. BRINDISI: I object to what he thought Your Honor.

THE COURT: Sustained.

THE WITNESS: I did not know where it was coming from.

BY MR. WELCH:

Q Prior to that meeting on September 18th at which you received this envelop from Mr. Marrone, had Mr. King told you anything about Mr. Marrone?

A Yes he did. May I go back to that prior question? I thought of something that was said on a prior occasion.

THE COURT: Would you repeat the earlier question.

BY MR. WELCH:

Q I asked you if Mr. King said anything else to you other that what you testified to as regards September 18th?

A As we traveled around, we were returning from a trip from Schenectady up to the City of Utica, and we stopped at a gas station to see a man who supposedly would have access to the money.

THE COURT: Strike it out. It is not responsive.

Q What did Mr. King say to you about this man?

MR. BRINDISI: When? And where?

THE COURT: Fix the time please and who was present and what was said.

BY MR. WELCH:

Q The question is directed to what date, are you referring to?

A This was a few days before the 18th. I don't recall the exact date.

Q Do you remember the location?

A Yes.

Q What location were you in?

A A gas station on-- I can't say that this moment.

MR. BRINDISI: I object to that then.

THE COURT: Strike it out.

THE WITNESS: I am sorry. I can't think of the street that it was on.

THE COURT: What city was it in?

THE WITNESS: Here, in the city of Utica.

THE COURT: What was said and who said it? Who said what to who?

THE WITNESS: Mr. King said that the father of the boy who was pumping the gas would have access to the money we needed, and that he could not reach him at that particular time, and he was going to make a call to another gentleman who was somewhere in the islands around Cape Vincent for that weekend, and he was also unavailable for the funds. He said I would have to wait over the weekend and I would receive the money on Monday, which was the 18th.

BY MR. WELCH:

Q Did Mr. King tell you anything about Mr. Marrone?

A He said Mr. Marrone was a very rough guy and that I would get into trouble if the money was not back on time.

MR. BRINDISI: I object to this. When was this?

THE WITNESS: That was on the same day, in the service station with Mr. King.

BY MR. WELCH:

Q Directing your attention to October 30th, 1972, did you have occasion to meet on that day with Mr. King in regards to the repayment of the loan?

A Yes I did.

Q Did you repay that loan?

A No I had not.

Q Did you make any effort to repay that loan?

A I tried to get the money together but was unable to do it.

Q So you met with Mr. King on the 30th in regard to that loan?

A Yes I did.

Q Where did you meet with Mr. King?

A At the Howard Johnson Restaurant on Genesee Street.

Q Which Howard Johnson's on Genesee Street?

A In Utica, New York, near the Thruway.

Q Why did you go to that meeting?

MR. BRINDISI: Your Honor, it is very difficult to hear here.

THE COURT: Yes. Keep your voice up. The acoustics here are horrible.

BY MR. WELCH:

Q What was the purpose of that meeting?

A The purpose of that meeting was so he could arrange for me to meet with representatives of the people who made the loan to me, so I could get more time on the payment that was due.

Q Did he tell you who those people were?

A No he did not.

Q Did you meet with anyone else on that day in connection with this loan?

A Yes I did.

Q Could you tell us? Give us the circumstances and the place of that meeting?

A Mr. King was in front of the Howard Johnson main entrance when I pulled in. I parked my car. He summoned me over to his vehicle, which was parked on the right side of the Howard Johnson Restaurant. I sat down in the passenger seat. He sat down in the driver's seat. This time he was driving an Oldsmobile.

Q This was not Mr. King's car?

A To my knowledge it was Mr. King's car.

Q Was anyone else present at this meeting?

A No. When we first started it was just the two of us. He said there was some fellow that was going to visit with me which was at my request.

Q Did anyone come and visit with you?

A Yes. A car pulled up behind us to the rear of the direction I was facing in.

Q Do you recall the description of that car?

A It was an older model Chevrolet. I believe it was either maroon or red at the bottom and had a black top. It was quite away from my car. Two men got out and came to the car. I did not know either of those men. They got in the back seat of the car, Mr. King's side.

Q Can you describe those men for the ladies and gentlemen of the jury?

A One is in the courtroom.

Q Can you just describe them?

A The man who was sitting behind Mr. King was a white male, approximately 25 to 30 years old, had a round face with blonde wavy hair, slicked back on the side, had sideburns, was wearing a turtleneck sweater, had squinty eyes.

Q And the other man?

A The other man was dark haired, also had sideburns. His face appeared to me to be pockmarked at the time. He had a large flat nose. He also was wearing a jacket under what appeared to be a turtleneck swe[illegible] and was sitting directly behind me.

Q Do you see that man in the courtroom today?

A Yes.

MR. SCHOLL: Your Honor, I object to any evidence regarding the identification of my client, if the identification of my client was made through photographs, and I respectfully submit and request a hearing on that issue in the absence of the jury.

THE COURT: All right. The jury may be excused until tomorrow morning at 10 o'clock. Don't talk about the case. Don't talk about it amongst yourselves. Don't allow anybody to talk to you at home. Don't listen to anything about it on the radio or watch anything about it on television or read anything about it in the newspapers. Any disobedience to these rules will be punishable of contempt of court. Obviously you don't want to do that. Not only that, it will delay this trial and the court would like to make every effort to move this trial along within a reasonable time consistent with the administration of justice. So your cooperation along these lines is very essential and very important and indeed a disobedience of my instructions will have serious effects, and I don't want anybody to be involved with that.

When you come to the Courthouse, go into your jury room and remain there until brought out to the jury box. Be particularly careful in the halls, elevators and around the corridors not to talk about this case.

All right. Good afternoon.

(At this point the jury retired from the courtroom).

MR. SCHOLL, Your Honor, at this time I respectfully move to surpress any evidence that the prosecution may attempt to introduce here regarding the identification of Jack Zogby in view of the fact that that identification was based upon photographic identification, to wit, the mug album and the photo which was used by the victim, the alleged victim, Mr. Sackman. I request the production of that mug album so I may question this witness regarding his identification of the defendant.

THE COURT: You go ahead and question him. If we need the album or more than one album, we will get it. First of all let's see where you go.

VOIR DIRE EXAMINATION

BY MR. SCHOLL:

Q Mr. Sackman---

THE COURT: Perhaps if you examined from over here, it will be easier for all of us.

BY MR. SCHOLL:

Q Had you ever known Jack Zogby prior to October 30, 1972?

A No sir.

Q Had you ever seen him before?

A No sir.

Q Did there come a time subsequent to October 30, 1972, when you went to the Federal Bureau of Investigation Office at 258 Genesee Street in Utica, New York?

A Are you saying have I ever been in that office?

Q That's right, after October 30, 1972?

A Yes I have.

Q Was it for the purpose of viewing the mug album?

A No sir.

Q Did you at any time subsequent to October 30, 1972 view the mug album or the mug file?

A I don't know what your phrase "mug file" means.

Q I will rephrase it. Did you view a file of persons alleged to be criminals by the Federal Bureau of Investigation at their offices at 258 Genesee Street?

A No sir.

Q You did not?

A No sir.

Q Were you ever presented a wooden box containing photographs of certain individuals, some of whom may have been criminals and others not? Were you ever presented this box?

A Yes sir.

Q By the Federal Bureau of Investigation?

A Yes sir.

Q at 258 Genesee Street, Utica, New York?

A No sir.

Q Where was the box presented to you?

A In a vehicle back of the cemetery in Syracuse, New York.

Q Was that presented to you by the Federal Bureau of Investigation?

A By two agents of the Federal Bureau of Investigation.

Q Who were those agents?

A Mr. Kolaver and Mr. Ryan.

Q Where was the cemetery?

THE COURT: Who cares.

A A few blocks from my home.

THE COURT: It is not material. Next you will want to know who was buried.

BY MR. SCHOLL:

Q What time was this?

A During the daytime.

Q And on what date?

A I don't know the exact date.

Q How soon after October 30th, 1972?

A Perhaps a day or two at the most.

Q Did you view this mug file at the request of the Federal Bureau of Investigation?

THE COURT: Let's not label it. We only get into trouble. Did he view photographs.

BY MR. SCHOLL:

Q Did you view photographs?

A Yes.

Q At their request?

A Yes.

THE COURT: How many?

THE WITNESS: There was a whole box full. I would estimate there were perhaps a hundred.

BY MR. SCHOLL:

Q Mr. Sackman, prior to your viewing these photographs had you given a description of someone to the Federal Bureau of Investigation?

A Very definitely, sir.

Q What was the description that you gave?

A Approximately the same I just said before.

Q I am not asking for "approximately". What information did you give to the F.B.I. regarding the description of someone?

A I gave them a description of the two unknown men of the back seat of the vehicle that night.

THE COURT: You already told us the description of the blonde. What was the description of the other man?

THE WITNESS: The man had dark hair. A man approximately 30 to 40 years old. He had a face that appeared to be pockmarked with a large predominant nose.

BY MR. SCHOLL:

Q Did they at the time you gave them the description suggest anyone who that might be?

A No.

Q When did you give the description in regard to the time you view the pictures?

A I would say a day or two before. I reported each incident to the F.B.I. as they took place.

THE COURT: Don't volunteer Mr. Sackman. You will have an opportunity to testify.

BY MR. SCHOLL:

Q On October 30th you volunteered to the F.B.I. that this incident took place; is that correct?

A Correct.

Q Did you tell them the description of the person who threatened you?

A They knew of the incident before it took place, that I was going down for the specific purpose because I couldn't pay the money.

Q So was it on October 30th or the next day, October 31st, that you gave them the description of these men?

A On the next day.

Q October 31st?

A I believe so.

Q And you viewed the pictures how many days after that?

A Within the next few days. I am not sure of the exact time. You will have to check with the F.B.I. about that.

Q Now you said it was during the day that you viewed these pictures?

A Yes.

Q And you said there were approximately a hundred photographs in the album?

A That would be my guess.

Q Can you tell the court how they were set up?

A In alphabetical order.

Q In what sort of a container?

A They were in a wooden box, approximately this size by this size (indicating).

THE COURT: Indicating about 5 by 8. Is that it?

THE WITNESS: I would say a little better than that. It might be 12 or 14 inches in length and about 6 inches in width. It was quite a large size box.

THE COURT: All right.

BY MR. SCHOLL:

Q And you were seated in whose automobile was this?

A Federal Bureau of Investigation automobile.

Q Where were you seated?

A I was sitting in the back seat.

Q Were the two agents in the front seat?

A I think so.

Q Mr. Ryan and Mr. Kolavar?

A I think so.

Q Who presented the box to you?

A Mr. Kolavar.

Q What did he say to you when he gave you the box?

A He said there were a series of photos in here he would like me to look at and try to ascertain if any of the two gentlemen who were seated in the back seat of the car, their pictures appeared.

Q Did he give you any indication as to what his photos were?

A No sir.

Q As to the identity of the person?

A No sir.

Q Did Mr. Ryan?

A No sir.

Q Did you then take the box and proceed to view the photos?

Yes sir I did.

Q In what manner or sequence?

A I started with the front of the box, proceeded on to all the pictures. As I was proceeding through the box I was very much aggitated because I couldn't see any of the pictures of the men, until I came to the "Z" and I picked out the picture of Mr. Zogby.

Q Can you tell me the approximate size of the pictures in that box?

A Say 4 by 6; perhaps a little larger.

Q What color were they?

A I am not sure, either an orange or beet color, but that I am not sure of.

Q Were the photographs contained in that box of uniform size?

A No sir.

Q Were they all different sizes?

A Yes sir.

Q Were they official police mug photographs?

Not all of them, sir.

Q Were some of them?

A What is a "mug" photograph, so I know what I am talking about.

Q I am speaking of where the height instrument shows?

A Of the side face. Yes, some were.

Q But not all?

A Not all.

Q Did some of them appear to be just snapshots?

A Candid photos.

Q They were all different, is that correct?

A Right.

Q How were they affixed to the card?

A I don't recall, sir.

Q Were there any notes, Mr. Sackman, on each card?

A Not to my knowledge. I am not sure. I didn't pay any attention to the notes. I was just looking for faces of two men that threatened me that night.

Q You didn't notice whether there were any notations on any of the cards?

A All I noticed was the names of people as I was going through.

Q There were names on every card?

A Not on every card, but some.

Q What were Mr. Ryan and Mr. Kolavar doing while you were going through this file?

A Just sitting in the front seat watching me go through the cards.

Q How long did it take you to go through?

A A fair amount of time. It was quite a time.

THE COURT: Can you estimate it?

THE WITNESS: About a half hour or more.

BY MR. SCHOLL:

Q During this time did Mr. Ryan or Mr. Kolavar make any mention whatsoever to you about any other photographs?

A No sir, not about the photographs. They were just watching me go through them.

Q Now you saw that photograph of Mr. Zogby a few days after October 30th; is that a fair statement?

A Yes.

Q Are you now saying, Mr. Sackman, to this court that a gentleman seated in this room is the man whose photograph you viewed?

A That gentleman there (indicating) is the man who was in the back seat and that gentleman there is the man whose photograph I viewed.

THE COURT: Which gentleman?

THE WITNESS: The gentleman that has his hand on his chin right now.

THE COURT: Let the record reflect that he identified the defendant Zogby.

BY MR. SCHOLL:

Q Mr. Sackman are you saying that that gentleman is the man whose photograph you viewed and who is now sitting in the courtroom?

A Yes.

Q That is the man whose photograph you viewed; is that correct?

A A photograph of that gentleman, yes.

Q Of that gentleman. Do you know how old the photograph was of Mr. Zogby in that file?

A It was a younger picture than the way he appears now, but it was him.

Q Did you not identify this suspect to the Federal Bureau of Investigation as a 30 to 35 year old man?

A I said 30 to 40 years old I believe, sir.

Q You believe?

A Yes.

Q Do you know how old Mr. Zogby is?

A No I don't.

Q Have you any idea how old he is?

A No.

Q Now Mr. Sackman, going through the file did you notice whether or not there were similar photographs of other people which could be the same as the identification you had given to the Federal Bureau of Investigation?

A No sir.

Q In other words was the only photograph in that file Mr. Zogby's that would be similar to the identification that you had made?

A The only photograph that appeared there that I thought was Mr. Zogby, was Mr. Zogby.

Q In other words there were no other photographs in there of persons with similar characteristics; is that correct?

A That is correct, and the way it looked to me I saw nobody else in that file that looked like Mr. Zogby, and I was very relieved to find his picture under "Z".

Q Are you saying there were no other photographs in that file of persons with similar characteristics to the man that threatened you?

A The picture I picked out was the man who threatened me.

Q I didn't ask you that. I asked if there were any other persons whose photograph appeared in that file?

THE COURT: Your question is pretty bad. What do you mean, eyes, nose, ears?

BY MR. SCHOLL:

Q Using the witnesses description, was there any other photograph in there of a man with a large flat nose?

A Yes.

Q 30 to 40 years of age?

A No. Mr. Zogby's nose, I picked it out immediately.

Q So there weren't any other photographs in there with his characteristics?

A I recognized the man.

MR. SCHOLL: I am not asking you that.

THE COURT: It is frivolous. Proceed. I have to decide. I think it is totally frivolous what you are asking him.

MR. SCHOLL: May I have one moment to review my notes?

THE COURT: Yes.

BY MR. SCHOLL:

Q Mr. Sackman did you testify before the grand jury in this case?

A Yes I did.

Q Did you give the grand jury a description of the defendant Zogby?

A I believe I did.

MR. SCHOLL: Your Honor I respectfully request a copy of the grand jury minutes as they relate to the identification of Mr. Zogby.

THE COURT: I don't believe you made an appropriate foundation.

BY MR. SCHOLL:

Q Did you in your testimony before the grand jury set forth certain characteristics?

THE COURT: He has already answered that he said that he gave a description.

BY MR. SCHOLL:

Q Did you give reports to the Federal Bureau of Investigation after the description of this man?

A I said I did before, sir.

Q Do you know of your own knowledge whether these were reported?

A I had no knowledge of what the Federal Bureau of Investigation did with any information I gave them.

THE COURT: When did you give the description to the F.B.I?

THE WITNESS: The next day.

THE COURT: Before you had seen the photographs?

THE WITNESS: Yes.

THE COURT: When did you give the description to the grand jury?

THE WITNESS: After I had seen the photographs.

THE COURT: That is what I thought. I don't see how it would be probative because he said he gave it to the grand jury after he saw the photographs, so he would be bound in coming here, if he is bound at all.

MR. SCHOLL: I respectfully request Mr. Welch---

THE COURT: I suggest you talk to me, counsel.

MR. SCHOLL: I would like to make a

request that the photographs be produced into the court.

THE COURT: Oh sure. But I don't see how the grand jury testimony would help you. It would only delay things.

MR. BRINDISI: If Your Honor please, for the purpose of saving time on the cross-examination of this witness, we would like to have the grand jury testimony that this witness gave; plus any material that we are entitled to under the Jenks Act.

THE COURT: Can you make it available now?

MR. WELCH: I can Your Honor.

THE COURT: Without prejudice to anyone here.

MR. WELCH: I don't believe so Your Honor. Without prejudice. The Jenks Act makes that available after the witness testified for the record---

THE COURT: I think we better wait until we are through with this phase, in view of the many things you advised me of. We will wait.

MR. SCHOLL: May I have this marked.

(Box marked as Defendant Zogby's Exhibit Z-1 for identification).

BY MR. SCHOLL:

Q Mr. Sackman, I show you exhibit defendant's Exhibit Z-1 and I am going to ask you whether or not that was the box that was shown to you by the members of the Federal Bureau of Investigation?

A Yes sir it was.

Q And can you tell me what the notation is on the front of the cover of the box?

A I didn't even notice that when I looked.

Q What does it say?

A "Hoodlums and gamblers, Utica-Rome."

Another line is "Utica-Rome, burglars and others."

And then the next line is "Out of town, all types." Three categories.

THE COURT: Out of town what?

THE WITNESS: All types, Your Honor.

MR. SCHOLL: Your Honor, to save time I shall not question this witness any more about this box, but I would like to present it to the court and ask the court to view the photographs, to find that they are not uniform, not official police mug shots, as is required by the cases.

THE COURT: If it is in evidence obviously I will look at it. Do you offer it?

MR. SCHOLL: I offer it.

THE COURT: Any objection?

MR. WELCH: No objection Your Honor.

THE COURT: Received.

(Defendant Zogby's Exhibit Z-1 for identification received in evidence).

BY MR. SCHOLL:

Q Did you, Mr. Sackman, at any time before you viewed these mug shots or these photographs tell anybody from the F.B.I., that you wouldn't be able to identify these suspects?

A Will you repeat that?

Q Did you ever tell any member of the Federal Bureau of Investigation that you just wouldn't be able to identify those people?

A No. I thought I could identify them.

Q Do you know who took the photographs of Mr. Zogby?

A No sir.

Q You don't know when it was taken?

A No sir.

Q When you went looking through these photographs were you searching for the photograph of a man between 30 and

35 years of age?

A I was searching for a reproduction of a man who I would remember that threatened me that night.

Q Was that man between 30 and 35 years of age?

A It was of a gentleman between 30 and 40, and the other was a younger man. I was looking for both.

Q Did you pick out a photograph of a man between 30 and 40 years of age?

A I picked out the reproduction of the man I thought was sitting in the car, and that is that man there.

Q But that wasn't the same man that you described to the Federal Bureau of Investigation?

A Yes it was.

Q You described the man as being 30 to 40 years of age?

A Yes I did.

Q And you picked out the photograph of a man not between 30 and 40 years of age?

MR. WELCH: Objection Your Honor.

THE COURT: It is repetitious. It is argumentative.

MR. SCHOLL: Your Honor, I wish to call Mr. Ryan to the stand.

THE COURT: Are you finished with the witness you have now?

MR. SCHOLL: Yes I am Your Honor.

THE COURT: All right, Mr. Ryan.

MR. WELCH: Is Mr. Sackman excused for the day?

THE COURT: Yes, as far as I am concerned. Anyone else want to examine at this point?

(No response). You are excused for the day.

(Witness excused for the day).

- - - - -

THE COURT: Will counsel come up while we are waiting for Mr. Ryan?

It seems to me that we have a very small handful of spectators here and they are pretty easily controlled. At this point I would be disinclined to grant your motion for a private trial unless you can show me convincingly that I have a right to do so even if it is by consent.

MR. BRINDISI: I will look up some law.

THE COURT: I would prefer to hold a public trial because there are only a handful of people.

MR. BRINDISI: The only ones here are all related to Al Marrone.

THE COURT: But they can be carefully watched and controlled. I think it is in the defendants' own interest to have a public trial, if we can do that with reasonable certainty.

MR. BRINDISI: Thank you Your Honor.

JOHN C. RYAN

called to the stand, being first duly sworn, was examined and testified as follows:

THE COURT: All right.

BY MR. SCHOLL:

Q Mr. Ryan, you are a member of the Federal Bureau of Investigation; is that correct?

A Yes sir.

Q Mr. Ryan sometime prior to October 30, 1972, did Mr. J. Schuyler Sackman view some photographs in your presence?

A Yes.

Q Where was that?

A In the back seat of a car at a place in Syracuse.

Q Mr. Ryan, did I not pursuant to the Order of Judge Port come to 258 Genesee Street, Utica, New York, sometime in January of 1973 to view some pictures?

A Yes you did.

Q And were you present when I viewed them?

A Yes.

Q And did you not tell me at that time Mr. Ryan that Mr. Sackman viewed those photographs at your office at 258 Genesee Street?

A I don't recall telling you that at the time.

Q You don't recall telling me at the time. Do you recall telling me that Mr. Kolevar came into your office and asked you if he could borrow your photo file?

A Yes, he borrowed my photo file.

Q And do you recall your telling me that he took it into his office with Mr. Sackman?

A I am not sure of the meaning exactly. His office is different from my office.

Q Don't you recall telling me that?

A Could you rephrase the question please.

Q Mr. Ryan, don't you recall my being in the office and your telling me that you were all present when Mr. Sackman viewed these photographs?

A That is true and not true.

Q Well what part is true?

A He viewed the pictures at one time without my presence.

Q Where was that?

A I don't know.

Q Didn't you tell me it was at 258 Genesee Street?

A I don't know this.

Q Didn't you tell me that?

A I don't recall telling you this.

Q Do you recall telling me that Mr. Kolevar came into your office, asked to borrow your photographs, took them into his office where Mr. Sackman viewed them?

A It is possible. I don't recall telling you this specifically.

Q You don't recall it. Do you recall telling me that Kolevar told you that Sackman went through the file until he finally got to the Z's?

A Yes.

Q Do you recall that?

A Yes.

Q Does that refresh your recollection? Isn't that what you told me?

A Yes.

Q Did you at any time tell me that these photographs were viewed in an F.B.I. car in a cemetery?

A Yes.

Q You told me that?

A It is possible. I recall this happening, but I don't recall telling you this or not.

Q Mr. Ryan it has only been a short time since I was in your office.

A You confused me.

Q I guess so. It is important to my client, Mr. Ryan, that you not be confused.

MR. WELCH: I think if Mr. Scholl would just ask a question--

THE COURT: It would help if you ask a few relevant ones.

BY MR. SCHOLL:

Q Were you present at any time when Mr. Sackman viewed these photographs?

A Yes.

Q Where?

A In a car.

Q When?

A I don't recall the specific date.

Q Approximately when?

A It was prior to the indictment.

Q Prior to the indictment or prior to December 7th?

A I am assuming, I don't recall.

Q What is your best judgment?

A I can't recall the date.

Q Sometime between October 30th and December 7th?

A I can't recall.

Q You have no idea then?

A Of the exact time, no.

Q What is your best judgment as to when this occurred?

A I can't recall.

Q Do you recall Mr. Sackman viewing these photographs?

A Yes.

Q Where?

A In a car.

Q Whose car?

A I believe it was an F.B.I. car. It could have been his car or it could have been an F.B.I. car.

Q Where was the car at the time he viewed the photographs?

A It was in the cemetery.

Q What cemetery?

A I don't know.

Q Is it in the City of Syracuse?

A I believe it is this side of Syracuse.

Q Was it night or day?

A Daytime.

Q What time of day?

A Afternoon.

Q Where was Mr. Seckman seated in the car?

A I don't recall specifically.

Q How long did it take him to view these photographs?

A I would guess five or ten minutes. I don't know.

Q How many photographs are in the box, Exhibit Z-1?

A I would guess between 150 to 200.

Q And it took him about ten minutes?

A I would say generally. I am not certain.

Q Were there other photographs in there--- I will withdraw that. Prior to his viewing the photographs, did he give you any indication as to the description or character of the person he was attempting to locate?

A Yes.

Q What description did he give you?

A Blonde hair, squinty eyes, medium height. That is all. About age 30, 35.

Q That is the only description he gave?

A To my knowledge. To my recollection.

Q Blonde hair, squinty eyes, age 30 to 35?

A Yes sir.

Q Did he at that time withdraw a photograph from that box and say, "This is the man"?

A No.

Q He did not. What did he do to the photographs?

A We kept custody of them.

Q Did he relate to you that he thought somebody was the suspect?

A No.

THE COURT: Did he select any photographs from the box, Mr. Ryan?

THE WITNESS: Not to my knowledge, no sir.

THE COURT: What do you mean, "Not to your knowledge"? Were you asleep?

THE WITNESS: I don't recall.

THE COURT: Were you asleep?

THE WITNESS: No sir.

THE COURT: Well did he or didn't he select a photograph?

THE WITNESS: No.

BY MR. SCHOLL:

Q He did not. Did you at any time while he was viewing these photographs give him any suggestion as to who the person might be that he was looking for?

A No.

Q Did the other agent mention any names?

A No.

Q Did you have any conversation with him at all while he was viewing these photographs?

A I am not certain. I don't recall specific conversation.

THE COURT: Did you make any report about this?

THE WITNESS: No I did not, Your Honor.

MR. SCHOLL: May I confer with my client, Your Honor?

THE COURT: Yes.

BY MR. SCHOLL:

Q Mr. Ryan, did you make any report or did any other member of the F.B.I. make a report to your knowledge regarding conferences with Mr. Sackman relating to the identification of Mr. Zogby?

A I believe so, sir.

Q Do you have those reports?

A I don't have them. I don't know where they would be.

Q Did you file the report?

A No sir.

Q Do you know of anybody who did? Did Mr. Kolevar?

A I think so.

THE COURT: Just demand the production of any reports concerning this defendant. Do you have any?

MR. WELCH: Yes Your Honor.

THE COURT: Bring them up. All reports describing this defendant. Is this being found from something else?

MR. WELCH: This is coming from my working reports. I did not have it copied.

THE COURT: Do you have the complete report in which this item appears?

MR. WELCH: This is it Your Honor. It is a circularized report stapled together.

THE COURT: All right.

Mark this as defendant's Exhibit, Defendant Zogby's Exhibit Z-2 for identification.

(Report marked as Defendant Zogby - 2 Exhibit for identification).

MR. WELCH: If Your Honor please, I am also giving to Mr. Scholl a report of Robert Kolevar which relates to the entire incident of the 30th, in which another description of

Mr. Zogby is given.

THE COURT: All right. Mark it and give it to me.

(Agent Kolevar's report marked as Defendant Zogby's Exhibit Z-3 for identification).

THE COURT: Give me a chance to read this Mr. Scholl. All right here you are.

(Hands Exhibit Z-3 to Attorney Scholl).

MR. SCHOLL: Your Honor, may I have an opportunity to read this? Your Honor, may I have the photographs?

THE COURT: Surely.

MR. SCHOLL: Your Honor, should this be marked separately? It comes out of Exhibit Z-1?

THE COURT: Let's call it Z-4, then we will make sure.

(Photograph marked as Defendant Zogby's Exhibit Z-4 for identification).

BY MR. SCHOLL:

Q Mr. Ryan, I show you Exhibit Z-4 and ask you what that is?

A This is a photograph of Jack Zogby.

Q Is that a photograph which was contained in the file of photos that you had kept for yourself as a member of the F.B.I?

Q Was this your personal file by the way?

THE COURT: What do you mean by "this"?

Q Was Exhibit Z-1 a personal file? Is this too an official photo file?

A Yes.

Q Was this checked for your own use?

A Yes. And the others in the box.

Q Now Exhibit Z-4, the photograph of Jack Zogby, did you take that photograph?

A No sir.

Q Do you know who did?

A No I do not.

Q How did you come by the photograph?

THE COURT: What difference does it make?

MR. SCHOLL: I am trying to indicate---

THE COURT: I don't see how it is material.

BY MR. SCHOLL:

Q Do you know when the photograph was taken?

THE COURT: It is still not material. This is not actually going to what we are trying to explore which is whether there was a probable suggested identification. That is all we are trying to find out. When the photograph was taken doesn't matter.

MR. SCHOLL: This photograph is a photograph of at least ten or fifteen years of age.

THE COURT: I don't care. It is immaterial.

MR. SCHOLL: If the witness identifies a man 30 to 35 years old and we now have a man 48 years old, we have a discrepancy.

THE COURT: It is still immaterial.

BY MR. SCHOLL:

Q Mr. Ryan, are there notations on this card?

A Yes sir.

Q Did you put the notations on?

A Yes.

Q You indicate Jack Zogby is a burglar; is that right?

A Yes.

Q His date of birth is listed on there?

THE COURT: It states what it states. I can read. You know there are some judges that really can read. Let's get to something here. You are just wasting the time of the court and so far we have not established much by asking what is on a card when I can read.

BY MR. SCHOLL:

Q Subsequent to the time of October 30, 1972, did you discuss a suspect with Mr. Sackman in connection with the description of the suspect?

THE COURT: Can I have the first part of that Mr. Jordan?

(The court reporter repeated the question as above recorded).

BY MR. SCHOLL:

Q You have a conversation with Mr. Sackman about the description of the men you were looking for?

A I would say prior to meeting him in the car in Syracuse, I would say no.

Q Did you know Jack Zogby prior to October 30, 1972?

A Yes.

THE COURT: You already asked that and he already said he didn't.

MR. SCHOLL: He already answered it, he did.

THE COURT: I am sorry. It was Sackman who said that.

BY MR. SCHOLL:

Q You did know the defendant prior to October 30, 1972?

A Yes.

Q Did you make that fact known to Mr. Sackman?

A I don't believe it was discussed.

Q But you didn't make it known to him?

THE COURT: Mr. Ryan, will you try to answer a question.

THE WITNESS: No.

THE COURT: You are supposed to be a trained F.B.I. Agent.

BY MR. SCHOLL:

Q You did not witness Mr. Sackman pull out the photograph and identify the man; is that correct?

A I don't recall, sir.

Q Mr. Ryan, is defendant's Exhibit Z-1 in substantially the same condition that it was in when Mr. Sackman viewed it?

A I am not sure. There are additions.

Q So this is not the same?

A There have been additions.

Q Are there photographs in here which are similar in nature and characteristic?

THE COURT: Again it speaks for itself.

BY MR. SCHOLL:

Q Did you at any time prior to Mr. Sackman going through this file, rearrange any photographs for the sole purpose of his viewing it?

A No.

THE WITNESS: I am sorry, Your Honor, I have to correct that last statement.

THE COURT: All right. Think before you speak. He wants to correct his last answer.

THE WITNESS: I did replace a photograph with another, more recent photograph of another individual in the box.

BY MR. SCHOLL:

Q For the sole purpose of Mr. Sackman viewing the pictures?

A Yes.

Q And whose photograph did you replace?

A Mr. Craig Owens.

Q You put in a newer photograph of Craig Owens; is that correct?

A Yes.

MR. SCHOLL: Your Honor, I have no more questions of this witness.

CROSS-EXAMINATION

BY MR. WELCH:

Q Mr. Ryan, after October 30, 1972, and prior to November 8, 1972, had you observed any suspects in regard to the October 30 incident involving Mr. Sackman?

THE COURT: Sustained.

Q Mr. Ryan, do you recall Mr. Sackman ever looking at this box and not picking out a photograph of Mr. Zogby?

MR. SCHOLL: Your Honor, I believe he has answered the question previously.

THE COURT: Well he has the right to cross-examine about his answer, hasn't he?

Q Is it your recollection that you have not-- do you recall Mr. Sackman viewing this box?

A Yes.

Q Do you recall whether or not Mr. Sackman withdrew any photograph at all?

MR. SCHOLL: Your Honor, may we have the time and place?

THE COURT: Yes, fix the time and place.

Q Do you recall the time and place Mr. Sackman viewed this box?

A I recall the place, not the time.

Q Where was the place?

A In a cemetery this side of Syracuse.

Q Do you recall the approximate day?

A No I don't.

Q Do you recall Mr. Sackman pulling any photographs from that box?

A I believe he pulled several photographs, making comments.

Q Do you recall whether he pulled the defendant Zogby's photograph out?

A I believe so, but I am not certain.

Q You are not certain?

A No.

MR. WELCH: I have no other questions.

MR. SCHOLL: One more question, if Your Honor please.

REDIRECT EXAMINATION

BY MR. SCHOLL:

Q Mr. Ryan, you have just stated---

THE COURT: I heard what he just said. Next question.

BY MR. SCHOLL:

Q He pulled several photographs. Was Mr. Zogby's among those that he pulled? I will withdraw that question, Mr. Ryan. What did he say about the several that he pulled?

A He commented on numerous photographs of people, whether he pulled them or not I am not certain.

Q What were the comments?

A Generally comments on individuals he recognized.

Q And were those that he recognized as being possible suspects that he was looking for?

A I am sorry. Could you repeat the question.

THE COURT: Wake up.

BY MR. SCHOLL:

Q When he commented [illegible] on the photographs did he indicate that some of them may have been the suspect he was looking for?

A I don't recall.

Q Do you know which photographs they were that he pulled out?

A I don't recall specifically. There were several he commented on.

MR. SCHOLL: I have nothing further Your Honor.

MR. WELCH: Nothing further Your Honor.

THE COURT: You are excused.

(Witness excused)

THE COURT: Next witness.

MR. SCHOLL: Your Honor, I have nothing further.

MR. WELCH: Your Honor, the United States would like to call a witness if we may.

THE COURT: All right.

MR. WELCH: We call Robert J. Kolevar to the stand.

ROBERT J. KOLEVAR

called as a witness by the government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Kolevar, how are you employed?

A I am a Special Agent of the Federal Bureau of Investigation.

Q In the course of your duties as a Special Agent of the Federal Bureau of Investigation, did you have occasion to show an array of photographs to one J. Schuyler Sackman?

A Yes sir I did.

Q Do you recall where you showed him those photographs?

A Yes sir, it was in a cemetery in Syracuse, New York.

Q Do you recall the date?

A November 8th it was.

Q Was anyone else present?

A Just Mr. Sackman and myself.

Q There were no other F.B.I. Agents present?

A Not on that occasion.

Q How many occasions did you show the photographs to Mr. Sackman?

A I showed photographs to Mr. Sackman twice out of that box.

MR. WELCH: May the record reflect that the witness is pointing to Exhibit Z-1 when he said, "Out of that box"?

THE COURT: Yes.

BY MR. WELCH:

Q Directing your attention to November 8, 1972, did Mr. Sackman recognize any photographs in that box?

A He recognized two or three photographs, as I recall.

Q Did he recognize anyone as a suspect in this case?

A Yes sir he did.

Q Do you recall who he picked out as a suspect?

A Yes, Jack Zogby.

THE COURT: Was anyone else present with you when he picked out Zogby?

THE WITNESS: No sir.

THE COURT: When was this?

THE WITNESS: This was November 8th.

BY MR. WELCH:

Q Was anyone else present with you on the other time that you were showing this box to Mr. Sackman?

A Yes sir.

Q Who was with you?

A Special Agent Ryan.

Q Did you make any comments---

MR. SCHOLL: May we have the date of the other time and the place?

Q Tell us the date of the second showing or the other showing of this box to Mr. Sackman?

A I don't recall the exact date, but it was a very short period of time.

Q Was it before the 8th of November?

A It followed the 8th. Three or four days after the 8th.

THE COURT: Who was present then?

THE WITNESS: Just Mr. Ryan, Mr. Sackman and myself.

THE COURT: Did he select any photographs at that time?

THE WITNESS: I think then he pulled I believe two photographs at that time of Mr. Zogby.

Q Did you make any comments to Mr. Sackman prior to his pulling Zogby's photographs on either occasion?

A Absolutely not.

Q Mr. Kolevar the second showing of these photographs, where did that take place?

A In a parked automobile I believe. It was near the Post Office Building where our offices in Syracuse are located. I am not certain, but to the best of my recollection that is where it was.

MR. WELCH: I have no further questions.

CROSS-EXAMINATION

BY MR. SCHOLL:

Q Mr. Kolevar, did Mr. Sackman make a positive identification of anyone on November 8th, after viewing these photographs?

A Yes sir he did.

Q And at whose suggestion did he look at that again?

A He went all the way through the box the first time.

Q This is on November 8th?

A On November 8th.

Q In the cemetery?

A In the cemetery, in Syracuse, he pulled the photograph of Jack Zogby from the box and made a comment to the effect, I don't remember exactly what he said, but to the effect, "That is the man. That is the man that threatened me. I will never forget it."

Q He pull any other photographs in the cemetery that day?

A He hesitated while looking at other photographs in the box.

Q Do you recall whose photographs they were?

A Yes sir, one of them I recall.

Q Who was that?

A A Mr. Del Dyman. I am not certain of the pronunciation.

Q What was the comment about Del Dyman?

A "That this individual looks similar to the other individual that accompanied Zogby on the night that I was threatened."

Q Did he pull any other photographs that he considered to be similar to that of Zogby?

A Of Zogby?

Q Yes.

A He stopped at several others and said this man's facial resemblence and dark hair---

Q Whose photograph was that?

A I don't recall because he simply stopped and pointed out the physical features.

Q And at the second time when he viewed the photo, you don't recall the date?

A No sir. It was shortly after November 8th.

Q Did he pull any photographs from the box?

A Again I don't recall that he did. He might have. I know he stopped and hesitated and locked hard at some.

Q Do you recall which ones?

A Again I believe it was a photograph of Del Dyman and another photograph of an individual who had blonde hair, and then he stopped and looked at the photograph of Zogby and looked at it as though studying it and I don't recall any other photographs.

Q Did you at any time, Mr. Kolevar, suggest to Mr. Sackman as to whom you thought was the suspect?

A No sir. I had absolutely no idea of who it might have been.

Q Did you know Jack Zogby prior to October 30, 1972?

A No sir. I had heard his name.

Q Where had you heard his name?

A Again in conversations with other agents but not necessarily in connection with this case.

Q Had other agents suggested to you that it might have been Jack Zogby?

A To the best of my recollection, I don't believe that they did suggest it. At that time we had absolutely no idea who it might have been.

Q Did you in any way change the box simply for purposes of Sackman's view?

A Absolutely not. I did not tamper with the box in any way.

Q Did you at any time view these photographs with Mr. Sackman at 258 Genesce Street?

A The photographs in the box?

Q Yes.

A Did I view them where?

Q At 258 Genesee Street, Utica. The F.B.I. Office?

A No sir I don't believe so. To the best of my recollection I didn't.

MR. SCHOLL: Your Honor, that is all I have of this witness.

MR. WELCH: The government has no

further redirect and no other witness.

THE COURT: You are excused.

(Witness excused)

THE COURT: Do you want any other witness that you want to call?

MR. SCHOLL: No I do not.

THE COURT: You rest?

MR. SCHOLL: I rest.

THE COURT: Government rests?

MR. WELCH: Yes Your Honor.

THE COURT: I deny your motion. It is plain to the court from the F.B.I. report which has been marked as Exhibit Z-3, that Sackman gave the F.B.I. a description of both of the men that entered the car at the Howard Johnson parking lot on Genesee Street in Utica on October 30, 1972. That description tallies sufficiently with the photograph selected by Sackman for me to find that there was no inpermissible suggestive identification procedures by the use of photographs. The arrangement of the photographs in the box, which was Exhibit Z-1, was alphabetical. The photographs differ to be sure, but there are many which correspond to the type of photographs of the defendant Zogby.

There is nothing on the Zogby photograph which in any way would make it so distinctive that it could be palmed off, so to speak, by the agents and in any way suggestive that this is the man we are looking for. The number of photographs certainly are sufficiently large that there was no impermissible suggestion of any kind, and I find that the identification of the defendant by his photograph was upon the basis of the witness, Sackman's, recollection of him.

Also, the evidence is sufficient that he was in the car on October 30th long enough and under circumstances which gave the witness Sackman reason to have a good opportunity to observe him. And the fact that before he even saw the photograph he described him so well surely shows that his identification of this defendant surely does have a distinctive nose and distinctive black wavy hair. There is nothing as having been one of an independent source without any impermissible suggestion or any substantial likelihood of mis-identification. Accordingly the court denies the motion.

MR. BRINDISI: Your Honor, while I was making my opening statement you referred to a case which I didn't put down.

THE COURT: United States vs. Provo in the Circuit. The law is clear that you can impeach a witness upon general misconduct. You can only do it by showing specific convictions or specific violations.

MR. BRINDISI: Is that P-R-O-V-O?

THE COURT: Yes. That one pertains to a defendant, but if you trace it you will find it also refers to a witness. Recess.

THE CLERK: The court stands in recess until 10:30 tomorrow.

(Whereupon at this time a recess was taken to February 22nd, 1973, at 10:30 A.M. o'clock).

- - - - -

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

-against- :

LOUIS CHARLES KING, ALBERT J. MARRONE, :
JAMES VINCENT TALERICO, JACK ZOGBY 72-CR-283
and CARL J. MAZZA, :

Defendants. :

The trial in the above-entitled matter was had pursuant to notice at the United States District Court in and for the Northern District of New York, at Utica, New York, commencing on February 22, 1973, before HON. LLOYD F. MAC MAHON, United States District Judge sitting by designation, and a Jury.

* * * * *

THE CLERK: Bring the jury in.

THE COURT: I would like the spectators to sit in the center section please.

(At this point the jury was brought into the courtroom and the following proceedings occurred).

J. SCHUYLER SACKMAN

continuing, testified further as follows:

THE COURT: All right, proceed.

DIRECT EXAMINATION (Continuing)

BY MR. WELCH:

Q Mr. Sackman you are still under oath from yesterday. Are you married Mr. Sackman?

A Yes I am.

Q Do you have any children?

A Three.

Q What are their ages?

A I have a son who is 15, a daughter 14 and a daughter 9.

Q All living at home with you?

A Yes.

Q Mr. Sackman you testified yesterday concerning a loan on September 18 for $4,000.00, with $1,000.00 interest. When was that loan to be paid back?

A One month later, on October 18th.

Q How did you state you would pay it back?

A I was working on two projects with Mr. King, Mr. Marrone, narcotic projects.

MR. BRINDISI: I object to that.

THE COURT: I am sorry. I didn't hear the witness.

(The Court Reporter repeated the question and answer as above recorded).

THE COURT: Overruled. No, I will sustain the objection to the form. The testimony is was this a conversation that you had. Come up here.

(The following testimony took place at the side bar between the court and counsel outside the hearing of the jury).

THE COURT: You have to put these things in terms of the defendant saying something. Do you understand that, Mr. Welch?

MR. WELCH: Yes sir.

THE COURT: And I think that this is an exceedingly dangerous area for you to be getting into. It may very well be prejudicial if you get into the subject of narcotics. You ought to know better. I suggest you spend some time with this witness and teach him not what to say and how to testify. It is prejudicial, but I will sustain the objection. Strike out the answer.

MR. BRINDISI: Your Honor, will you instruct the jury to disregard the answer.

THE COURT: Yes.

(The following proceedings took place in open court with the jury present).

THE COURT: I instruct you to disregard the answer.

BY MR. WELCH:

Q On September 18, 1972 were you an informant for the Federal Bureau of Investigation?

A Yes I was.

Q Were you an informant to the Federal Bureau of Investigation with regard to extortion and extension of credit?

A No.

Q While working as an informant for the Federal Bureau of Investigation, did your business suffer?

A Yes.

Q Were you able to work?

A No.

Q Did you ask the Federal Bureau of Investigation for money at that time?

MR. BRINDISI: I object.

THE COURT: Sustained. Strike it out.

BY MR. WELCH:

Q And now Mr. Sackman I invite your attention to October 30th. Yesterday at the conclusion of the day you were telling us about a meeting at the Howard Johnson parking lot in Utica, New York. Would you tell us what time you had that meeting and who was present?

A It was in the evening, approximately 7:30, 8 o'clock at night. Originally I met with Mr. King first. He was in front of the Howard Johnson Restaurant, which was when I pulled in. I got out of my car and walked to his car with him. I got in on the passenger side and he got into the driver's seat of the Oldsmobile.

Q Was it light or dark out at that time of the night?

A It was dark out, but the parking is fairly well lit in that particular section.

Q Yesterday you testified to two individuals getting into the car. Approximately how long would you estimate you were in the presence of those two individuals in the automobile?

A After we were in the car?

Q How long were they in your sight either before getting into the car or after getting into the car?

A Perhaps fifteen minutes.

Q Where did you first see them?

A They pulled into the back of the parking lot, parked their own vehicle, and got out of the vehicle after parking it, and walked over to our vehicle, Mr. King's vehicle.

Q You testified as to a blonde man and a dark haired man? Where was the blonde man in the car?

THE COURT: Before they got into the car did they stand outside the car for any length of time?

THE WITNESS: I opened the door and they came in.

THE COURT: What was the lighting condition at that time?

THE WITNESS: It was dark outside but it was fairly lighted. There was an artificial light overhead where we were parking.

BY MR. WELCH:

Q When the two individuals entered the car where was each individual?

A The blonde man was sitting behind Mr. King and Mr. Zogby was sitting behind me.

Q Did you have an opportunity to view their faces?

A Yes I did.

Q Will you explain how that took place?

A When the conversation started, Mr. King opened the conversation stated he brought me there for the purpose of my explaining to them why I had not been able to pay the loan at the present time, and I was turned with my back to the door and I was sitting facing to Mr. Zogby who was behind me, and more or less front facing Mr. King, who was in the driver's seat, and the blonde haired gentleman who was in the back.

Q Did you get an opportunity to observe the face of the dark haired man?

A Yes.

Q How did you manage that?

A While the conversations were going on, I was able to see his face quite clearly and was able to see the blonde haired gentleman's face quite clearly.

Q Do you see the dark haired gentleman in the courtroom today?

A Yes I do.

Q Will you point him out to the court and jury?

A He is the gentleman sitting on the right with the yellow tie.

MR. WELCH: Let the record indicate he has pointed to the defendant Zogby.

THE COURT: Yes.

BY MR. WELCH:

Q What then was said according to the best of your recollection?

The blonde haired gentleman, the blonde haired man in the back seat said to me, "When are you going to have the money?" And I said that I wasn't sure when I was going to have the money. I told him I had been attempting to arrange the money through other sources because of my supposed dealings with Mr. King and Mr. Marrone [illegible] come through at that point, and I was trying to raise the funds in a different fashion.

Q Was this blonde haired man while you were talking doing anything to you?

A No not at the time I was talking. He said to me things that were---

THE COURT: Strike it out. Tell us what was said.

THE WITNESS: I am sorry Your Honor.

THE COURT: Pretend you are a record player and play it back to us.

THE WITNESS: Yes Your Honor. The blonde haired man in the back seat told me that I had to have the money and he asked me when I was going to specifically have the money. I told him I was going to have the money not later than one month from that day, November 18th. He said, Are you going to have all the money?" I said, "Yes."

He said, "What about the $1,000.00 interest that is due now?" I said I would try to have the $1,000.00 interest sooner. I had a check coming and I expected to give him that check. He said, "What are you going to do if you don't have that check coming?" I said I would try to raise the money elsewhere. I asked for an extension of time. He said he didn't know whether he would give it to me. He turned to Mr. King and said, "Is it alright with you?"

Mr. King said, "An extension of time" or something, that he probably would go along, that he felt it was Mr. Marrone's loan and it was up to Mr. Marrone to make the decision, but he would go along. He felt I would have the money.

At that particular point the blonde haired man in the back seat pulled out a gun and pointed the gun at me. He pulled back the hammer, I heard the click, and I could see the bullets in the chamber. It was about six inches from my face. He said, "You better have the money." He said, "How much do you think you owe now with the vigorish?" I said, "I owe $5,000.00."

He said, "How much do you owe on the 18th of November?" I said, "I probably owe $6,000.00, because there is another $1,000.00 interest due.

He said, "That is absolutely correct. He said, "I will extend the principal, but want the vigorish paid within ten days." And he was holding the gun up to my face, and I was very frightened.

Q You used the word "vigorish". What does that mean?

A It is a term they use---

Q What is the meaning of that term?

A Extra interest that is due at that point. He then asked me if I intended to go---

MR. BRINDISI: I think he has answered the question.

BY MR. WELCH:

Q Did you, sir?

THE COURT: Wait a minute. Apparently the witness doesn't think so.

A (continuing) He then said to me---

MR. BRINDISI: Could we have who said this?

A (continuing) the bonde haired man told me, "you are not going anywhere." And I said, "I don't intend to go anywhere. Where would I go?"

He said, "To the police or the law" was the expression. I said I wouldn't go to the law. I intended to pay the money.

At that point Mr. Zogby switched out a knife, and I remember this very distinctly, he put it first toward my back, and then to my neck, and he had a knife four or five inches to my neck, and he told me to make sure I paid this loan, and that he was very good with a knife.

Then they got out of the car and started to walk away, and the blonde haired gentleman yelled back to Lou King and said, "You should never give a man like this money." Mr. Kind said I have to get out of the car, they are going up to report about this. Then he came back and said he liked doing business with me, he hoped the business deals with him and Marrone would come through and there would be no problem with dealing with these other fellows and that he was in an embarrassing position. And at that point I left and went home.

Q Inviting your attention to the two men, the one identified as Zogby and the one identified as the blonde, did he do anything about the gun he was holding?

A No I don't recall.

Q Mr. Zogby say anything about the knife?

A Yes. I think I mentioned, Mr. Zogby said he was very good with a knife.

Q Did he say anything further?

A I can't recall at this moment. There were numerous meetings where I was threatened with---

THE COURT: Please don't volunteer Mr. Sackman.

THE WITNESS: I am sorry Your Honor.

BY MR. WELCH:

Q Mr. Sackman directing your attention to November 11, 1972, did you have occasion to telephone Mr. James Talerico?

A Yes I did.

Q Do you recall what was said in that conversation?

A When I called him, I called him early in the morning.

Q Approximately what time in the morning?

A Say approximately 9 o'clock or so.

Q Where were you when you placed the call?

A I was at my home.

Q To where did you place the call?

A To his home, in Utica, New York.

Q Do you recall what was said in that conversation? Was anything said in that conversation relative to the

September 18th loan?

A Yes. I told him I was having trouble getting the $1,000.00 which was due on Monday, and I told him I needed to discuss the matter further with Mr. King. He had planned to have me come down, Mr. Talerico had, with reference to some other business, and he had spoken to my wife on the phone the night before and asked me to come down at 1 o'clock in the afternoon. I thought I was to be there in the morning and wanted to check the time. He was rather upset. He had been up late the night before. He said, "just be there at 1 o'clock." I met him at the specified place at 1 o'clock.

Q Referring to that telephone call to Mr. Talerico on the morning of the 11th, did you make a recording of that telephone call?

A Yes I did.

Q Could you tell the ladies and gentlemen of the jury how you made the recording?

A I have a gray electronic tape recorder which has a small inside tape and there is a wire that plugs into it, goes out on a string, and has a suction cup, and you take the suction cup and you clip it on the earpiece of the telephone, and it sticks to it and when you talk on the telephone and you put the recorder on the telephone conversation is recorded, both my voice and Mr. Talerico's voice.

Q Had you used this equipment before?

A Yes I had.

Q Have you used it--- can you give us a rough estimate how many times you used it?

A Perhaps 30 or 40 times, and for other purposes 150 to 200.

Q How many times have you used it on the telephone?

A On the telephone, 25 to 30 times.

Q Had you used it that morning on the telephone?

A Yes I did.

Q Did it record everything that you heard Mr. Talerico say?

A Yes it did.

Q Can you tell the ladies and gentlemen of the jury the type of tape that you used?

A I used various types of tapes. Some of them were purchased in Daw's Drug Store and some of the tapes were provided to me by the Federal Bureau of Investigation.

Q The types of tapes, are they cartridge tapes or roll tapes?

They were cartridge type tapes.

Q The tape that you used to tape the conversation with Mr. Talerico, had that tape ever been used before?

A Some of the tapes I used.

Q Had that tape been used before?

A I am not sure.

Q Could it have been used before?

A Yes it was possible that it could have been used before.

Q Do you recall if there was anything else on that tape that you used for Mr. Talarico's call?

A I am not sure.

THE COURT: If there is, does the machine wipe it out?

THE WITNESS: Yes.

THE COURT: As it records something else?

THE WITNESS: Yes. When you put a new recording on it wipes out what was on the tape.

MR. WELCH: May I have these marked.

(Tape and tape recorder marked as Governmen's Exhibits 2 and 3 for identification).

BY MR. WELCH:

Q Mr. Sackman, I hand you what has been marked as Governmen's Exhibit 2 for identification. Will you tell the court and the ladies and gentlemen what that is?

A This is the one that I described before, that plugs into the tape recorder. This is the suction part that sticks onto the earpiece of the telephone.

Q Mr. Sackman I hand you Exhibit 3 for identification and ask you if you can tell the ladies and gentlemen of the jury what that is?

A This is the electronic tape recorder.

Q Mr. Sackman, Government's Exhibits 2 and 3, are these the electronic equipment that you used to record the November 11 conversation with Mr. Talerico?

A Yes they are.

THE CLERK: Do you offer them?

MR. WELCH: Not at this time.

BY MR. WELCH:

Q Now Mr. Sackman when you plased this call to Mr. Talerico, did you ask for Mr. Talerico by name?

A I did. I asked for Jim. I think it was a person to person call, because I was not sure he was going to be in, and the operator asked someone. I know it was a person to person.

Q How many times had you spoken with Mr. Talerico on the phone?

A Numerous times.

Q And you say you asked for Jim?

A I am not sure on that particular tape how I asked for him, because there are voices---

Q Did you recognize the voice on the other end as Mr.

Talerico s?

A Yes I did.

Q When recording this conversation, did you stop the recorder at any time during that conversation?

A Not until the telephone was hung up on the receiver.

Q After that what did you do?

A I made some notes on the tape recording what the conversation was.

Q On the tape or the cartridge on the outside?

A The cartridge, and I turned it over to Mr. Kolavar of the F.B.I.

MR. MANGANELLI: May I have the time when he turned it over?

THE COURT: When did you turn it over?

THE WITNESS: I don't recall the exact time.

THE COURT: Give us your best estimate.

THE WITNESS: Within a day or two.

THE COURT: All right.

MR. WELCH: Would Your Honor indulge me for a moment?

(Discussion between Mr. Welch and a gentleman sitting at counsel table).

BY MR. WELCH:

Q After you telephoned Mr. Talerico on the 11th, did you have occasion to meet with agents of the Federal Bureau of Investigation?

A Yes I did.

MR. MANGANELLI: Object to it unless the foundation is laid as to when.

THE COURT: May I have the question please?

(Court Reporter repeats the question as above recorded).

THE COURT: Fix the time.

BY MR. WELCH:

Q On November 11th, Mr. Sackman, you testified you called Mr. Talerico in the morning?

A Right.

Q How soon thereafter did you meet with agents of the Federal Bureau of Investigation?

A Approximately two hours later I met with the F.B.I. agents at Jack Ryan's house.

Q Who is Jack Ryan?

A Jack Ryan is an F.B.I. Agent for this area.

Q And what took place there?

A I was given some electronic equipment to wear.

Q Could you describe the electronic equipment that you were to wear?

Yes. A unit was placed around my waist. It is a waist-band a type which has a small approximately 2 1/2 inches in width and perhaps 1/2 inch in depth base with an off and on switch in the center here with a wire which goes up my chest. I was strapped from the waist up. This unit was placed around my waist and the transmitting wire was put on the top of the reception tape on my chest. I then put my tee shirt over this unit and at this point there was approximately a 2 and 1/2 to 3 inches in width recorder which was placed around my chest, in a cartridge type recorder, that had two reels inside it which was placed under my shoulder here. And the waist unit here, which is a transmitter, had an on switch, which the F.B.I. turned on, and I never touched that switch once it was turned on. The cartridge type unit which was on my body and under my arm with an elastic band had a wire, the wire came down and came down underneath my band here (indicating), a wide belt, and then out of the pocket, which had a switch on that I could turn on or off. I had used these units and practiced with these units on prior occasions.

Q Prior to November 11?

A Yes sir.

Q On November 11 did you test the transmitter?

A The transmitter was tested in Jack Ryan's home and was activated by the F.B.I., and I never touched it again until it was turned off by the F.B.I.

Q Did the transmitter pick up what was said?

A The transmitter picked up everything that was said. Incidentally the cartridge, there was one thing I didn't explain, there are two wires on the cartridge unit that were pinned to my undershirt and the two speakers were positioned under my undershirt approximately under the collar. Those are two receiving units for the cartridge under my arm.

Q Did you test the tape recorder?

A Yes I did.

Q Was it in working order?

A The tape recorder was in working order.

Q Can you describe to the ladies and gentlemen of the jury and the court the type of tape that was in that equipment. Was it cartridge or reel?

A It was a cartridge with two wheels on each end, which I refer to as reels.

Q Did they look like the cartridge that you used in the grey equipment?

A Yes. It is a black unit rather than a grey, being a plastic unit. They work on the same principle, but they look different.

Q Was there anything else on that tape recorder?

A The only thing that was put on, before I left the office, Jack Ryan's house, was I mentioned my name and the date.

MR. WELCH: I should like this marked.

(Tape recorder marked as Government's Exhibit Number 4 for identification).

BY MR. WELCH:

Q Mr. Sackman, I show you what has been just marked as Government's Exhibit 4 for identification and ask you if you can tell the court and jury what that is?

A This is the unit I described to you before. This is the piece that was attached to the elastic band and placed underneath my arm like so (indicating). It was between my tee shirt and this outer shirt. That would be it. These are the two speaking units, two receiving units, that were pinned on approximately in this position onto my tee shirt underneath my outer shirt. I can also say this is definitely the same unit. We were afraid of the reflection and they painted it black and went under the shirt I was wearing at the time, and we were afraid of the reflection being spotted by Mr. King or Mr. Talerico or any of the other people I was meeting. This was the off and on switch which went down underneath and came out of my pants pocket behind the belt in this fashion here (indicating). You will notice there are some ridges on the on side of the switch. When you reach in to activate the inside you can feel it is on.

Q On the 11th when you met with the agents, was that set turned on by you?

A The reel unit?

Q Yes.

A It was only turned on by me to get my name and the date.

Q Then did you turn it off?

A Then I shut it off and didn't activate it again until I met them later in the day.

Q Mr. Sackman on the 30th day of November, after meeting with F.B.I. Agent Ryan, and placing this electronic equipment on your person, did you then meet with Mr. Talerico?

A Yes I did.

Q Where did you meet with Mr. Talerico?

A At Garaci's Restaurant.

MR. BRINDISI: May we have the date.

THE WITNESS: On November 11.

MR. BRINDISI: I thought you said the 30th?

BY MR. WELCH:

Q On what date did you place this equipment on your person?

A November 11th.

Q And on November 11th you met with Mr. Talerico at

Geraci's?

A Yes.

Q What time was it that you met with Mr. Talerico?

A It was five after 1. The F.B.I. Agents' surveillance vehicle had to be placed into position.

MR. BRINDISI: I object to this.

THE COURT: Yes. Strike it out as not responsive.

BY MR. WELCH:

Q Mr. Sackman when you met with Mr. Talerico did you activate the body recorder?

A No I did not.

Q And when you met with Mr. Talerico did you discuss the loan of September 18th?

A Yes I did.

Q Can you tell us what Mr. Talerico said?

A I asked Mr. Talerico for some help. I asked him, I described who were then two unknown people who had sat in the back of Lou King's car, who had pointed the gun at me and the knife at me. I gave him a description of who those people were. I asked if he knew who they were. He said he did. He said they were "punks".

Q Did he give you any names?

A He didn t give me any names. I was distraught over the fact I was having trouble getting the loan together and tried to get help from Mr. King, and I said to Talerico, "if I went to the old man, would the old man help me?" He said "I don't know.

Q Did Mr. Talerico say anything more about the two men who met with you on the 30th?

A He told me they were hoodlums and they were rough people.

Q Was that the sole discussion, the only thing discussed at Geraci's that day with Mr. Talerico?

A No it was not.

Q Again on the 11th of November, 1972, after all the events that you just testified to, and after Mr. Talerico met with you at Geraci's, did you have occasion to meet with Mr. King?

A Yes I did.

Q What time did you meet with Mr. King?

A Later in the afternoon, at Mr. Talerico's request, I went over to see Mr. King. He suggested I go over to see him to give him a message about the garf.

MR. MANGANELLI: I object to this unless the proper foundation is laid.

THE COURT: Yes. Strike it out. Sustained.

BY MR. WELCH:

Q Did you meet with Mr. King?

A Yes I did.

Q When you met with Mr. King were you wearing electronic equipment that you earlier described?

A Yes I was.

Q When you met with Mr. King to your knowledge was the transmitter still on?

A Yes it was.

Q Was the tape recorder on?

A I turned the tape recorder on just as I got out of my car and approached the front door of Mr. King s house.

Q Did you have a conversation with Mr. King?

A I had a fairly lengthy conversation with Mr. King.

Q Did you leave that tape recorder on during the whole period of time that you were conversing with Mr. King?

A Yes I did.

Q Before telling us what was said in that conversation, could you tell us what you did while you were conversing with Mr. King? Where did you meet with Mr. King?

A In his dining area of his home.

Q Did you converse with him the entire time in the dining area?

A No, we left the dining area of his home and went to a diner a few blocks away from his home and we made a telephone call there.

Q Can you tell us where the diner is located?

A The diner is located on the road-- I think it is Route 5.

Q You know what number it is?

A I believe it is Route 5.

Q Do you know the name of that diner?

A I don't recall the name of that diner.

Q Did you go directly to the diner from Mr. King's house?

A We went directly to the diner from Mr. King's house.

Q Approximately how long were you at the diner?

A We made a phone call at some point.

Q Did you make the phone call or did Mr. King?

A We only made one call. I charged it to my credit card. Mr. King doesn't like to use the telephone.

MR. BRINDISI: Move to strike it out.

THE COURT: Yes, strike it out.

BY MR. WELCH:

Q You placed the phone call?

A I placed it with Mr. King at my side.

Q Did Mr. King speak on the telephone?

A No, he stood beside me.

Q You do anything else in the diner?

A Sat down and had some coffee, then got back in the car and returned to his home. I had talked to him about the loan while we were in the diner, to see what he could do to get me additional time. He said, no, they couldn't give me any more time, and that time had run out on me, and that the man with the knife knew how to use the knife and he was going to use it. He told me that they had been up past my home. I told him that I didn't want them, that I didn't want them in my home. I didn't feel my wife and children should be exposed to those men. He said he had no control over them. It was out of his hands. He told me I better get the money any way I can. nd he said, "do it as quickly as you can."

Q At that time when were you supposed-- when did you anticipate you were supposed to pay the money back?

A The following Monday I was supposed to pay the $1,000.00 in interest.

Q Can you tell us the date that following Monday was?

A The 13th of November.

Q Did you discuss-- did anyone else other than Mr. King and Mr. Talerico, Mr. Mazza and Mr. Zogby ever contact you regarding this loan?

A No.

Q Did Mr. King tell you where you were to pay the money back?

A Yes he did.

Q Where did he tell you?

A To meet him at the Whitsboro uto Shop in Yorkville.

Q When were you to be there?

A Monday. I usually met Mr. King about 11 o'clock.

MR. BRINDISI: I object to what he usually did.

THE COURT: Sustained.

THE WITNESS: I was to be there between 11:30 and 12:30.

BY MR. WELCH:

Q Inviting your attention to the 13th of November, at approximately 11:30 to 12:30-- excuse me, let me return to the 11th of November. Upon completion of your conversation with Mr. King, did you-- what did you do then?

A I left Mr. King's house at his request and went back to meet with Mr. Talerico and again at Geraci's to give him some answer in relation to some business deals.

MR. MANGANELLI: Object to that as incompetent, irrelevant, immaterial.

THE COURT: Overruled.

MR. MANGANELLI: Is this again on November 11th?

THE COURT: I assume it is. He is asking about the events of November 11th.

BY MR. WELCH:

Q Now Mr. Sackman, on the 11th when you mentioned returning to Mr. Talerico, was any of the electronic equipment you were wearing that day on?

A No, it was not. When I left Mr. King's house, an F.B.I.

surveillance vehicle came up behind me, and it was Mr. Kolavar. We parked off of Genesee Street, in a parking lot, and I took off the waist unit and I took off the unit I had on my body because I was a little apprehensive.

MR. MANGANELLI: Object to that Your Honor.

THE WITNESS: I am sorry. I took off the unit and gave them to Mr. Kolavar.

BY MR. WELCH:

Q This is on November 11th you gave both units to Mr. Kolavar?

A Yes, after the meeting with King, before I went to Geraci's.

Q Was the tape recording of the conversation with Mr. King still on the recorder when you turned it over to Mr. Kolavar?

A Yes it was. As a matter of fact I had forgotten to turn the unit off and he shut it off. He asked if it was still on and I said yes, and he turned it off.

Q Now Mr. Sackman directing your attention to November 13, 1972 at approximately 11:30 to 12:30, did you have occasion to meet with Mr. King?

A Yes I did.

Q Where did you meet with Mr. King?

A At the Whitsboro Auto Body Shop.

Q Where is that?

A That is between Yorkville and Whitsboro at the intersection of-- I forget the name of the street now. I am sorry.

Q Did you know it as the Whitsboro Auto Body Shop?

A I knew it as the Whitsboro Auto Body Shop of J. F. Auto Sales.

Q Do you know whether there are any signs on the building identifying it?

A I believe there is a sign on the front of the building that says J. F. Auto Sales.

Q Where in regard to that building did you meet Mr. King?

A There is an office in the front left corner of the building. There is an entrance on the side and an entrance from the front.

Q Was anybody else present?

A Mr. Talerico was present.

Q Can you tell us what you did in regard to this loan at this time? Did you do anything with regard to the loan at this time?

A Yes I did. I took my wallet out and paid Mr. King $350.00, which was a portion of the money I owed.

Q You gave it to Mr. King?

A Yes I did.

Q Did you say anything?

A I said, "this is the amount of money I could put together. I couldn't get the balance right now. I will do the best I can to get the balance."

Q Did you hand this to Mr. King in the presence of Mr. Talerico?

A Yes sir I did.

Q Did Mr. King say anything?

A Mr. King was disturbed.

Q Did he say anything?

A He said I had to have the rest of the money. I had to get it quickly. This money was not going to go against the juice, which was the interest, it was only to go against the principal, and he had instructions I was to be turned over to somebody else, and the whole $4,000.00 was going to be paid on the 18th, this $350.00 would go towards the $4,000.00 and a separate report would be made on the interest. He also told me to get into my car, go back to Syracuse and do whatever I had to do to get the money to pay it back. He said, "steal it if you have to." He told me these fellows are very dangerous people and I should not have borrowed the money if I could not pay it back, or if I had any reason to think I couldn't pay it.

At that point Mr. Talerico entered the conversation and said he had borrowed $500.00 from them at one point and they took a gun and placed it to his head and he said, "shoot, I don't have it", and he did pay it back eventually, but he never borrowed any money from them again.

Q Was this in answer to a question from Mr. Talerico?

A No, he just volunteered it, why I should pay it back. He said they were very serious-- a thing.

Q Did Mr. King say anything to you about your family?

A Yes. He told me again they knew where my home was and it was vitally important that I pay the money back. As a matter of fact he told me to go to my folks-- I had originally thought I would use my father to get the money. Then I got into a bind where my Dad purchased a condominium, and in the interim I was unable to get the money and he said "why don't you have your father sign a loan for you at the bank", and I said I was not able to do so because of my previous bankruptcy.

Q Did Mr. King or Mr. Talerico say anything about where this money came from?

A It was kind of a slip, from Mr. Talerico. In the conversation I had asked him, I said who did it come from.

MR. BRINDISI: May I ask when this conversation was? Was it on November 13th?

THE WITNESS: Yes, it was on November 13.

I asked "who do I go to? There must be somebody I can go to and those two." And he slipped the initials "J.F." and they changed the subject and they started talking about going to get the money.

BY MR. WELCH:

Q Have you ever heard the initials J.F. before?

A Yes I had.

Q What did they signify to you?

A Joseph Falcone.

MR. MANGANELLI: I object to this Your Honor.

THE COURT: Overruled.

BY MR. WELCH:

Q At that time did you know anything about Joseph Falcone?

A I understood that he was the head of an organized---

MR. BRINDISI: Your Honor I object to this.

THE COURT: Overruled.

A (continuing) I believe that he was the head of the local organized crime family in this area.

Q Mr. Sackman, on the 13th, during this conversation with Mr. King and Mr. Talerico, was anything said about when you were to meet with Mr. King and Mr. Talerico again?

A Yes. Mr. King asked me to come back a couple days later to let him know how I was doing, to have the money on the 18th, and I did come back on the 16th.

Q On November 16th you said you returned?

A Yes I did.

Q At approximately what time did you return?

A The first time I entered the Whitsboro Shop, it was about 11:30, 25 to 12:00.

Q Prior to that time did you have occasion to meet with F.B.I. Agents?

A Yes I did.

Q Approximately what time did you meet with the F.B.I. Agents?

A A couple of hours earlier.

Q What took place at that meeting?

A I again put on the waist unit and the body unit.

Q Were these the same units that you had used on the 11th of November?

A Yes they were.

Q Did you test those units that day?

A Yes we did.

Q Did you or the members of the F.B.I. turn those units on?

A A member of the F.B.I. turned on the waist unit as he had done on the prior occasion.

Q Approximately what time was that?

A Perhaps a half hour before I left for Whitsboro.

Q Did you or any member of the F.B.I. turn on the body recorder?

A I turned on the body recorder later in the day. I did not turn it on when I went in the first time.

THE COURT: Let's pause a moment while we get rid of the noises in the background.

BY MR. WELCH:

Q How many times did you visit the Whitsboro Auto Body Shop on the 16th of November?

A Twice.

Q On the first occasion did you have the recorder on?

A Yes I did.

Q On the first occasion was the transmitter on?

A Yes it was.

Q On the second occasion was the body recorder on?

A Yes.

Q On the second occasion was the transmitter on?

A Yes.

Q Was the tape of the body recorder the same type tape used on the 11th?

A Yes it was.

Q To your knowledge was there anything else on that tape recording other than whatever you had picked up on the two times you visited the Whitsboro Body Shop?

A What is that?

Q To your knowledge was there any other recording made on that body tape on the 16th of November?

A No.

Q During the times that you were in the Whitsboro Auto Body Shop, the two times, let's go to the first time, when did you turn the recorder on?

A I turned it on when I stepped out of my car the first time. I went to the side door, which was locked. I went around to the front door, there were two men sitting there, and I spoke to the man who was at the desk and asked if "Lou" was around and he said no he wasn't.

Q And then what did you do?

A I asked when he was expected and he said, "Oh, probably later," and then I walked out.

Q Did you turn the recording off?

A When I got back to my car I turned the recorder off.

Q Approximately what time was this first visit to the Whitsboro Auto Shop?

A Approximately 11:30.

Q When did you return to the Whitsboro Auto Body Shop?

A Approximately five to 12:00 or noon.

Q Did you turn on the body recorder at any time before you returned to the Whitsboro Auto Body Shop?

A I turned it on when I got out of my car, and then I

Q At the completion of your second visit to the Whitsboro Auto Body Shop, what did you do with the transmitter and body recorder?

A I drove to the Nichol's Shopping Center and parked there and walked over to an F.B.I. car and sat down in the car, and the F.B.I. agents took off the unit.

Q Who took the units off?

A Let's see, that was the 16th. I believe it was Mr. Savage.

Q Did he retain the recorder that day?

A To my knowledge.

Q He did retain the tape on that day?

A To my knowledge he did.

Q Directing your attention, Mr. Sackman, to the second visit to the Whitsboro Auto Body Shop on November 16, 1972, can you tell us what you did when you went into the auto body shop and what if anything was said by you and tell us who else was present?

A I walked into the office again. This time Mr. King was the only one in the office, and I started my conversation with Mr. King by telling him why was two police officers inside.

Q Was anything said with regard to the September 18th loan?

A Yes there was.

THE COURT: See if you can think a little bit and give us the conversation.

THE WITNESS: Yes sir.

THE COURT: So we won't have to go back and go all over the lot. See if we can do it in some kind of chronological order so that the jury can follow it. All right, give us the conversation at that time. What did you say and what he said to you.

THE WITNESS: I said to Mr. King I was having difficulty getting the balance of the $4,000.00 together and that I had talked to one of the friends he had suggested in Syracuse, and I was unable to see him, and he was going to talk to somebody else that was out of town. This party was going to be able possibly to get the money for me. He told me it was imperative that I have the money. It was now out of his hands and there was nothing he would be able to do to help me in the situation. And he said I must get the amount by Saturday and bring the whole $4,000.00. He told me to go back to Syracuse and get the money any way, shape or manner that I could get it.

BY MR. WELCH:

Q Was there anything said about interest?

A He told me to forget about the interest. All he wanted me to do was get the $4,000.00. A separate arrangement would be made on the interest. The $2,000.00.

Q Is that Mr. King you are quoting?

A Yes.

Q Did you and Mr. King discuss the $350.00 given to Mr. King on the 13th?

A Yes. He told me they would not accept the $350.00. They wanted the whole $4,000.00 in one lump sum, and that he put the $350.00 under a dish.

Q This is what Mr. King is telling you?

A Yes. He said if I wanted to go to his home he would show me the $350.00 under a dish. I said I believed him, and that was the end of the conversation.

Q Was there anything else said as to who "they" were?

A No, he never told me who they were.

Q And that was it?

A There was no other conversation.

Q On the 16th did you ask Mr. King about the people who made the loan?

A On numerous occasions.

Q On the 16th?

A On the 16th I asked if I could meet with whoever gave me the loan so I could plead my case personally with him and he told me to have the money on Saturday. They did not wish to talk to me. That I was a dead man.

Q Did Mr. King say anything in response to the question you just put to him?

A He did not tell me who they were.

THE COURT: Did he tell you that you could meet with them or not meet with them?

THE WITNESS: He just said to bring the money in on Saturday.

THE COURT: He didn't respond to your request?

THE WITNESS: Yes sir. All he said was "get the money."

THE COURT: We will take our morning recess at this time. All spectators are to remain in the courtroom until the jury has departed.

THE CLERK: Court stands in recess.

(At this point the jury retired and the following took place outside the presence of the jury).

THE COURT: I understand somebody has a motion. I prefer to hear it at the close of the day unless it has something to do with something now.

MR. BRINDISI: I want to make a motion---

THE COURT: I can hear it at the end of the day.

MR. BRINDISI: It is a motion to strike the testimony.

THE COURT: I can hear it after the day's work.

(At this point a short recess was taken after which the trial was continued).

THE COURT: All right. Let's proceed. Let's get the jury in. I will hear your motion at the end of the day Mr. Brindisi. With a jury waiting while we do all this stuff is silly.

(At this point the jury returned to the courtroom).

THE COURT: All right, Mr. Welch, proceed.

J. SCHUYLER SACKMAN

resuming the stand, testified further as follows:

BY MR. WELCH:

Q Mr. Sackman, of course you are still under oath. Before the recess I had asked you a question in regard to whether you had asked Mr. King to meet these people who gave the money out. Have you had a chance to think about that question and do you recall whether Mr. King had said anything in response?

A Yes. I was trying to think of the whole situation. He did state that nobody ever gets to see the people who put the money out. He said, "you just don't get to see those people."

Q Did Mr. King at that time say anything in addition to the loan of September 18th? Did he characterize it to you at all?

THE WITNESS: Your Honor, may I ask a question? A lot of the language that was used---

THE COURT: Why? You answer questions. Put your question.

THE WITNESS: He told I was a fuckin dead man and told me to get my fuckin ass back to Syracuse and get the money or my family is in trouble. I am sorry to use that language, but there is a lot more he said.

THE COURT: Say what the conversation was. What he said.

THE WITNESS: He told me my family was going to be hurt unless that money was in on Saturday. There was going to be no extension of time, and I couldn't raise the money, and

I asked to see these other people, and they are like ghosts. He said, "no, they don t expose themselves."

BY MR. WELCH:

Q Did he say when you were to meet with him again?

A Saturday. I am sorry. (Witness cries). I was to meet on Saturday. He told me there wasn't going to be any more extensions, that there would be no extensions under any circumstances, because I had not paid the money when I was supposed to and he said, "you can t have any more extensions. You must have the money on Saturday."

Q Did you ask him what would happen on Saturday if you didn t have the money?

A I asked him what would happen and he said he didn't know. He said he was just the middle man. He was only doing his job, and he was sorry, he liked to do business with me and he was really my friend, but he couldn't do anything. I had to bring the money on Saturday. So I left.

Q Did you ask him for any more time than Saturday?

A I asked him to get an extension until Monday. He said, "we gave you an extension last time and you can't have any more extensions." He said, "you had an extension last month.

Q Did you ask him what would happen if you didn t show up on Saturday?

A Yes I did. I was rather concerned about my ability to raise the money, so I asked him, you know, if I called i or something like that. He told me the two guys who visited with me, as he put it, in the car, would be up to my house. He had no control over them.

Q What was your response?

A I told him I didn't want them to the house under any circumstances. I would certainly be there and would talk to whoever was there, if I didn t have the money, but I would try to get the money.

Q Do you recall anything else being said on that day at that meeting with Mr. King with regard to the Septemb 18th loan?

A He told me Mr. Zogby was going to cut me up and cut me quite badly. He was very good with the knife.

Q Did he refer to Mr. Zogby by name?

A No he didn't. He said the one with the knife, he is very good with the knife, and is going to cut your fuckin body up.

Q Directing your attention-- do you recall what the date was that the following Saturday was that you were supposed to meet?

A Wednesday was the 16th, the 17th, it would be the 18th.

Q Did you meet with Mr. King on the 18th?

A Yes I did.

Q Do you recall what time you met Mr. King?

A I met with Mr. King in the morning at his home.

Q Can you give us the approximate time?

A Sometime between 10:00 and 11:00 o'clock, between 10:30 and 11 o'clock I will say.

Q Prior to meeting with Mr. King, did you have occasion to meet with members of the Federal Bureau of Investigation?

A Yes I did.

Q Do you recall with whom you met?

A There was quite an office full.

Q Where did you meet?

A In the office on Genesee Street.

Q What office on Genesee Street?

A F.B.I. Office on Genesee Street. It is a tall office building. I think 258 was the address that the other attorney was using yesterday.

Q Was the electronic equipment that you described, the recorder and the transmitter, placed on you?

A Yes they were.

Q Now what time did you meet at the F.B.I. Office?

A It was probably 9:30 or 10 o'clock. I stopped up at that time. Put the equipment on. We tested the equipment as a matter of fact. And in testing the equipment one of the men called in from an outlying area near Mr. King's home.

Q Was the equipment in working order?

A It was working beautifully.

Q Did you see the tape that was placed in the recorder?

A Yes I did.

Q Did it look to be the same type tape used on the previous occasions?

A Yes, it was the same type tape.

Q To your knowledge was there anything on this tape before it was put into the machine?

A Before it was put into the machine, nothing.

Q Did you put anything on the tape?

A I put my name on it, yes, as I had in the past, and the date and the time, and then I shut the machine off.

Q When did you next turn the tape on?

A On walking into Mr. King's home I turned the equipment on.

Q When did you next turn the equipment off?

A Driving away from Mr. King's house.

Q What did you do with that equipment?

A I kept it on my person because I needed it for another appointment that day.

Q Was the switch on?

A The body switch was off. The transmitting unit was on.

Q After leaving Mr. King's house, when you said you turned it off---

A (interrupting) yes.

Q (continuing) ---what then did you do with the body recorder?

A Nothing. I just left it on my person. I had to drive down to Herkimer, New York.

Q Until when did you leave it on your person?

A Until I drove back to another meeting at Utica.

Q Did you later take it off your body?

A Later in the day.

Q Who did you give it to?

A It was given to the F.B.I. I am trying to recall which agent it was. I am not sure. It was at the Nichol's Shopping Center again. I think Mr. Kolavar took it off at that time, but I am not sure.

THE COURT: Would you come up please?

(The following discussion took place at the side bar outside the hearing of the jury).

THE COURT: We are taking too much time going through all the details about the tapes. All you have to do is identify the tape you want beforehand and identify if that is the same conversation he heard. That is all.

MR. WELCH: Thank you Your Honor.

(The following took place in open court before the jury).

BY MR. WELCH:

Q On November 18th or subsequent thereto, did you have occasion to hear the tape recording that was made by you in Mr. King's presence?

A Yes I did.

THE COURT: Is it an accurate recording of what you said?

THE WITNESS: Yes.

THE COURT: All the conversation that took place at that time?

THE WITNESS: Yes it did.

THE COURT: Any changes made in it?

THE WITNESS: Not to my knowledge.

THE COURT: Any that you recognize at all?

THE WITNESS: No sir.

THE COURT: Deletions or additions?

THE WITNESS: I didn't notice any.

BY MR. WELCH:

Q Was there a recording made of the subsequent meeting on the 18th? You testified that you met with Mr. King. Who did you meet with the second time?

A I met with Mr. King and Mr. Maz[illegible].

Q Did you record that meeting?

A Absolutely.

Q Have you heard that tape since?

Yes I have.

Q Is that a correct recording?

A Absolutely accurate.

Q Directing your attention to the 18th, you went to Mr. King's house. What did you say if anything in regard to September 18th loan?

A I told him I did not have the money and that I was unable to raise the money, but there was a possibility that I might be able to raise the money from a relative in Herkimer, New York. He asked me to go and meet with somebody who was standing by to talk with him about the loan. I told him I was unable to go with him at that moment. I wanted to go and visit with my relatives who he knew, and he suggested I go down there and try to get the money. And we set up a meeting for in back of the Howard Johnson Restaurant at approximately 12:30.

Q In this conversation with Mr. King, did you refer to any prior dealings with Mr. King?

A Yes. I did. I told Mr. King that I didn't want a duplication of his smacking me around because of John Longo, and he told me he didn't have any control over that and didn't want a repetition of that ridiculous situation.

Q Did you then set up a meeting to meet this person that Mr. King had mentioned?

A Yes I did.

Q Who set the meeting up?

A Mr. King.

Q Tell us what he said?

A He suggested on my way back from Herkimer I should meet them for lunch at Howard Johnsons and we would talk at Howard Johnsons.

Q He suggested that you meet them for lunch?

A Yes, he did. He asked me if I thought I could be back in that short period of time and I said I could.

Q Were times mentioned?

A Yes.

Q What time was mentioned?

A I believe the time we were going to meet was approximately 12:30.

Q And approximately what time was this?

A This was about 11:30 in his home, and I said I didn't need more than an hour to get from his home down to Herkimer and back.

Q Did you in fact meet with Mr. King at Howard Johnsons?

A I drove in there. Mr. King was standing next to the phone booth on the left hand side facing Howard Johnsons. I parked my car and he motioned to me to come to him. I parked my car and waved to him to come to me. He was rather reluctant and signaled some other party.

Q Just tell us what was said.

A What was said. And Mr. Mazza started walking towards us. Mr. King got in from the passenger's side in the back seat and Mr. Mazza got in the front seat.

Q Did you know Mr. Mazza before this day?

A No I did not.

Q That was the first time you ever saw the man when he was at the Howard Johnson parking with Mr. King?

A Just when he was approaching my car and getting in the car.

Q What was the lighting condition then?

A It was broad daylight.

Q How far away was Mr. Mazza when you first saw him?

A Twenty-five, thirty feet, forty feet maybe at the most.

Q And then what did he do?

A He got into the front seat of the car, closed the door.

Q Let me ask you this preliminarily. How long on the 18th at 12:30 was this man, this other man, in your presence?

A Perhaps ten to fifteen minutes at the most.

Q Did you look at his face once he got in the car?

A I sure did.

Q I believe you have testified he is the man who was in the car on the 18th with Mr. King. Is he in the courtroom today?

A Yes he is.

Q Can you point him out to the court and jurors?

A He is to the right of the attorney who is standing.

MR. LONGERETTA: I would like to know how he arrived at the identification of Mr. Mazza. I believe he said he didn't meet him before.

THE COURT: Come up.

(The following took place at the side bar outside the hearing of the jurors).

THE COURT: Have you got any basis for this or are we going to go through another silly thing like we did last night that goes no place.

MR. LONGERETTA: My request is as to how identification was made. He said this was a person he had never known at the time.

MR. WELCH: Mr. Mazza was not identified--

THE COURT: Were there any photographs or line-ups?

MR. WELCH: There was no line-up or identification by Mr. Sackman. He was identified by another person who witnessed the incident.

THE COURT: I will let him go ahead and will hold a hearing if you feel we need one again at the end of the day.

MR. LONGERETTA: Thank you.

(The following proceedings took place before the jury in open court).

BY MR. WELCH:

Q Mr. Sackman you were just about to point out the man who was in the car with you and Mr. King on the 18th of November. Would you do that for the ladies and gentlemen of the jury?

A He is the gentleman the third from the left on the far side of the table to the right of the attorney who just walked up to the desk.

THE COURT: Let the record reflect he identified the defendant Mazza.

BY MR. WELCH:

Q Now Mr. Sackman you testified that Mr. King was in a phone booth or near a phone booth at the Howard Johnson Restaurant?

A Yes.

Q And he made a gesture to you. Tell us then what happened?

A I pulled my car up to a stop to park it, and I waved for him to come toward me.

Q Did he come toward you?

A Yes.

Q At what time did he make this gesture?

A He signaled to me to come to him. I didn't want to do that.

Q Describe to the ladies and gentlemen of the jury what he did?

A He motioned like this (indicating).

Q Was that you or someone else?

A To me. Then he went like this (indicating) and Mr. Mazza came from another direction.

Q At this time had you parked your car?

A Yes I had.

Q At this time had you turned on the tape recorder on your person?

A The tape recorder was turned on when I crossed the Thruway before.

Q What did Mr. King then do?

A He got in the back seat of my car.

Q Did you tell Mr. King to get in the back seat of your car?

A No, he just opened the door and got in.

Q Describe the front seat of your car?

A It is a bench seat, divided.

Q Have you ever had three people sitting in the front seat of your car?

A Yes.

Q And Mr. King got in the back seat?

A Mr. King got in the back seat.

Q What did Mr. Mazza do?

A Mr. Mazza opened the door, got into the car, closed the door and he asked me how did I do.

Q What did you say?

A I said my relative was not in Herkimer, he was in Utica, and that therefore I did not have the money.

Q What did he say? Did he do anything or say anything?

A He smacked me here across the face (indicating) and pushed me over on the side like this (indicating). My head was ringing. He pulled out a knife and said, "I will kill you, you fuck. You can't fool around with us. I will kill you." He cut me right here (indicating). Then Mr. King pulled him off me, he said, "Carl" something, "that is enough." And he said "you are going to have that money here on December 1st or you are a dead man." And he was furious with me and used some very nasty language.

THE COURT: Tell us what he said.

THE WITNESS: He said, "you are a fuckin dead man. I am going to take care of your whole fuckin family. I am going to cut up all of you if you don't get the money. I am going to get this money. You are going to pay it on December 1st," and by this time he pulled his knife away and Lou said, "you should not have done it so hard. He will have the money. And then Mazza got out of the car.

Q Did Mr. Mazza say anything to Mr. King?

A Mr. Mazza said, "I am taking care of this now. It is not in your hands."

Q What side of your neck was it that you were demonstrating with the knife?

A He put the knife here (indicating) and he actually broke the skin. And it was bleeding, and when I pulled out of the parking lot there was a pin prick actually after that.

THE COURT: Indicating the left side of his neck.

BY MR. WELCH:

Q Did Mazza mention any dollar amount?

A He said to have all the money.

Q Did he mention a specific amount?

A Everything was happening so fast---

THE COURT: Please try to remember. Did

he mention a specific amount?

Q If you don't recall, tell us.

A I don't recall. I thought I was being killed.

MR. LONGERETTA: Objection to what he thought Your Honor.

THE COURT: Overruled.

BY MR. WELCH:

Q Did Mr. King say anything to you? Did Mr. King say anything to Carl Mazza? I believe you said he called him by the name "Carl"?

A I heard him say, "Carl that is enough. You didn t have to be that hard on him."

Q He say anything different than that?

A He said something to that effect.

Q Was this to you or Mr. Mazza he was talking? Did Mr. Mazza say anything to you at this time, on the 18th?

A Repeat that.

Q Mr. King was talking to you after Mr. Mazza---

A Left the car?

Q Left the car.

A Yes he did. He told me to go get the money and to have the whole thing in and to just do whatever I have to do, if you have to steal it, steal it to get the money.

Q Did he say anything about Mr. Mazza after Mr. Mazza left the car?

A He told me he was a very bad guy, and he had absolutely no control over him. He said he would get me anywhere I went if I didn't pay the money on the 1st.

Q Did Mr. King say anything else?

A He claimed he was just in the middle. He felt Al had set the thing up, and he felt--- let me see if I could put it--- he said he was just a middle man and he was sorry but he went on the limb for the money, the loan. He was responsible and he was in trouble with the people that gave me the loan.

Q Will you describe the knife that Mr. Mazza used that day?

A It was a blackish handle knife with a chrome "T" on the front of it, and the blade was out in front of the "T". The blade was about seven or eight inches, maybe six to eight inches in length, and it was the same knife I think that Mr. Zogby used.

Q Don't tell us what you think. Just describe the knife. Was there anything else that you observed about the knife Mr. Mazza used on that day?

A That is all there was. A chrome blade.

Q Can you describe the knife used by Mr. Zogby on the 30th?

A It was a "T" shape front on a black handle, with the blade out in front of it, and it appeared to be a switchblade, because I remember it switching out.

Q Was there any difference between the two knives, that you noticed?

A I didn't notice any difference. I thought it was the same knife.

Q Were you able to raise the money?

A No sir.

Q Did you meet with Mr. Mazza on the 1st?

A No I did not.

Q Did you meet with Mr. King on the 1st?

A No I did not.

Q Did you contact any of the defendants in this case, more specifically did you contact Mr. King subsequent to the 18th?

A Yes I did. I called him at the lunch hour, 11:30 to 12:30 hour, he was at the Whitsboro Auto Shop and he talked to me on the telephone.

Q Did you contact Mr. Talerico after the 18th?

A After the 18th?

Q After November 18th?

A Yes I did.

Q Do you recall when that was?

A I am not sure of the exact date. I believe it was the 30th.

Q Of November?

A Of November.

Q And where did you contact Mr. Talerico?

A At his home.

Q How did you contact Mr. Talerico?

A On his telephone, and I tape recorded the conversation as I had done in the past.

Q With what equipment?

A I used the grey electronic notebook with the long wire.

Q What did you do with the tape recording?

A I gave it to one of the F.B.I. men.

Q Have you heard the tape recording since that day?

A Yes I have.

Q Is it an accurate reproduction of the conversation?

A Absolutely.

Q Can you tell us what Mr. Talerico said in that conversation?

A I believe there was a snowstorm that night.

Q What time of the night was this?

A 9:30 to 10 o'clock. There was a snowstorm and I asked him if he would go across and see Mr. King and intercede for me because I was going to be delayed coming down in the morning, because I was waiting for a telephone call for some money.

Q Did you ask him to intercede or relate a message to Mr. King?

A To relate a message, to tell Mr. King I was not able to come down.

Q Did you call Mr.King on the 30th?

A Yes, and I tape recorded his telephone conversation during the noon hour.

Q This is on the 30th or December 1st?

A I am sorry, I didn't call him on the 30th.

Q Did you know Mr. King's home telephone number?

A No I don't.

Q Did Mr. Talerico tell you to do anything on the 30th?

A Mr. Talerico said he couldn't reach Mr.King on the telephone, and because of the snowstorm he said it was slippery and icy, and he was not going to go out and he told me not to worry about it, he would intercede in the morning and that I could contact Mr. King at the Whitsboro Auto Body Shop.

Q Did you say anything to Mr. Talerico, anything about Mr. King's friends?

A I told him I was afraid of his friends and didn't want them coming up to the house.

Q What was Mr. Talerico's response?

A He said he had no control over them.

MR. MANGANELLI: I assume this was said on the 30th of November in the telephone conversation?

THE WITNESS: Yes. He did tell me not to worry, that he would get in touch with Mr.

King and that I could call him at the Whitsboro Auto place at noon. I did have a phone number for that location.

BY MR.WELCH:

Q Did you call Mr. King at the Whitsboro Auto Shop on the 1st?

A Yes I did.

Q At what time was that?

A That was during the noon hour.

Q Did you record that conversation?

A No I did not.

Q Did anyone record that conversation to your knowledge?

A Yes, Robert Kolavar of the F.B.I. recorded it at my home.

Q In your presence?

A In my presence.

Q Now Mr. Sackman you mentioned a number of tape recordings that either you made or were made on your person. Did you consent to those tape recordings?

A Absolutely, yes.

Q Have you heard the recording made by Mr. Kolavar on December 1st?

A Yes I did.

Q Is that an accurate reproduction of the conversation with Mr. King?

A Yes it is.

Q Can you tell us what was said in the conversation with Mr. King on the 1st?

A I told Mr. King I was delayed in coming down and therefore I would be there during the noon hour; that I expected to have some money, and I would bring it down with me. I had to go on a trip to New York City and some other business that he knew about, and I would be passing by Utica at approximately 2:00 P.M. He told me he would not be able to meet me at 2:00 P.M., and he said he would send somebody over to meet me. And I said I would not give this money to a stranger and I was not taking a chance with these fellows to meet me. I asked him who were the people who were going to be there, and he said Talerico would be there.

MR. MANGANELLI: I object to this. It is hearsay.

THE COURT: I will take it subject to connection.

BY MR. WELCH:

Q Mr. King say he would be there?

A Mr. King in the end of the conversation said he would be there, yes.

Q What time had Mr. King said to meet him?

A Approximately 2:00 P.M.

Q And what place were you to meet?

A At the Howard Johnson parking lot where we had met on numerous occasions before.

Q What was the purpose that you asked for this meeting?

A So I could pay him the money I owed him. He said he would be there at 2 o'clock because he had something he wanted me to do in New York and I could kill two birds with one stone.

MR. WELCH: Will Your Honor indulge me for just one second?

(Discussion between Mr. Welch and a gentleman sitting at the counsel table).

MR. WELCH: I have no further questions of this witness at this time.

THE COURT: Do you plan to offer these recorders?

MR. WELCH: No Your Honor.

THE COURT: You do not?

MR. WELCH: Not the recorders.

THE COURT: The tapes?

MR. WELCH: The tapes, yes.

THE COURT: Well isn't this the time to do it?

MR. WELCH: Well if Your Honor please, if the defense is willing to stipulate to the exchange of the tapes from Mr. Sackman to---

MR. BRINDISI: May I ask a question?

THE COURT: All right.

MR. BRINDISI: Have you testified before the grand jury regarding this matter?

THE WITNESS: Yes I have.

MR. BRINDISI: Can I have the grand jury testimony and also the documents that we are entitled to under the Jenks Act.

THE COURT: Bring them to the Clerk and mark them as 3500 series, 3502. What is 3502?

MR. WELCH: The grand jury testimony of Mr. Sackman, Your Honor.

THE COURT: 3502.

MR. WELCH: I didn't hear the rest of Your Honor's direction.

THE COURT: All the 3500 material, concerning this witness. Let's have the record show as what you are identifying here.

MR. WELCH: Your Honor, I handed to the Clerk of the Court a transcript of Mr. Sackman's grand jury testimony.

THE COURT: Which we marked 3502. What i 3503?

MR. WELCH: 3503 is an F.B.I. investigation report, which contains---

THE COURT: I don't care what it contains. It is an F.B.I. report.

MR. WELCH: It is an F.B.I. report of an interview on November 18, 1972.

THE COURT: I don't care about that.

MR. WELCH: 3504 is an F.B.I. report and 3505 is an F.B.I. report.

THE COURT: Do they bear dates?

MR. WELCH: Yes.

THE COURT: What is 3503?

MR. WELCH: An interview dated 11/18/72. 3504, an interview dated 11/2/72, and 3505 a report of an interview dated 11/11/72. The dates in the upper right hand corner are the dates the reports were typed. The dates of the interview is in the lower right hand corner.

THE COURT: And that is all the 3500 material of this witness?

MR. WELCH: Yes.

MR. BRINDISI: May we have an opportunity to read this?

THE COURT: During the lunch hour.

Perhaps you can proceed with your cross-examination. Read them during the lunch hour.

CROSS-EXAMINATION

BY MR. BRINDISI:

Q Mr. Sackman I believe you testified that you were married in 1957; is that correct?

A Yes.

Q And that you reside in Syracuse, New York?

A Yes.

Q How long have you been a resident of Syracuse, New York?

A Approximately 17 years.

Q I believe you testified you were engaged in some business there?

A Yes.

Q What type of business was that?

A Life Insurance, mortgage brokerage.

Q Can you describe to the court and jury what a mortgage broker is?

A What a mortgage broker is?

Q Yes.

A A mortgage broker is a man who arranges mortgages for homes, offices, buildings, businesses, by bringing together the party who wants the loan and a lending institution or individual who wants to lend the money.

Q And how long have you engaged in that particular type of business?

A Approximately 6 or 7 years. It is a little more than that. About 11 years.

Q About 11 years?

A Yes sir.

Q So you started in approximately---

A '62. The tail end of '62.

Q I believe you had some college experience?

A Yes.

Q What was your college experience?

A I have a bachelor's degree in accounting.

Q You start your business when you got out of college?

A No. I worked for the county for two years, and then I went into the realty field.

THE COURT: Please keep your voice up. I can hardly hear you.

THE WITNESS: I went into the insurance and realty field in 1962.

BY MR. BRINDISI:

Q I believe there is some testimony that you gave that you at one time filed for bankruptcy; is that right?

A Yes.

Q And when was that?

A November 1971. And I also filed bankruptcy in 1956 or or '55-- early part of '56.

Q How old did you say you were?

A Forty.

Q So in 1956 you were how old?

A Twenty-three.

Q So the first time you filed bankruptcy was when you were twenty-three years old; is that correct?

A Yes.

Q And the last time was 1971?

A November, yes sir.

Q I believe there was some testimony that you were involved in some business transactions with a John Longo?

A He was my client.

Q He was your client?

A Yes.

Q In what way was he your client?

A He came to me for mortgages he wanted on some personal property which he owned, and this was months ago, to people here in Utica, there was a John Gorea. You want all the names of the people?

Q Not really. He was your client?

A Yes.

Q And you indicated to the court and jury as a result of your relationship with Mr. Longo, you were caused to file bankruptcy?

A This was an accumulation of two years of work.

Q And Mr. Longo is presently at Attica State Prison; is that right?

A I believe so.

Q Do you know why he is in prison?

A As I understand it he embezzled or utilized other peoples money incorrectly.

Q Do you know how much?

A No I don't. I have heard a lot of figures but I have not any idea how much it is.

THE COURT: How is this material?

MR. BRINDISI: Well it was---

THE COURT: Please Mr. Welch make appropriate objections or we will be here forever.

MR. WELCH: Objection. It is immaterial.

THE COURT: Sustained.

MR. BRINDISI: I think it goes to the character of the witness.

THE COURT: It doesn't go to the character of the witness, why another man is in jail.

BY MR. BRINDISI:

Q I believe you said you became an informer for the Federal Bureau of Investigation?

A Yes.

Q When did you become an informer for the Federal Bureau of Investigation?

A August 1972.

Q And this was before this transaction of September 18, 1972; is that correct?

A Yes.

Q Were you being paid by the Government to inform?

A No.

Q Did you-- were you granted immunity in some grand jury proceedings---

MR. WELCH: Objection Your Honor.

THE COURT: I have not heard the question yet.

MR. BRANDISI: I am asking whether this witness was granted immunity to testify before the Jefferson County Grand Jury regarding his transactions with John Longo.

THE COURT: Sustained.

BY MR. BRINDISI:

Q When you became an informer for the F.B.I., did that involve any of the defendants in this matter? I am talking now in August 1972?

A It certainly did.

Q It did?

A Yes sir.

Q Did you make reports to the F.B.I. regarding any transactions which might have taken place between yourself and these defendants?

A Yes I did.

MR. BRINDISI: May I have copies of those?

THE COURT: You have them.

MR. BRINDISI: I don't think I have.

MR. WELCH: May we approach the Bench Your Honor?

THE COURT: Yes.

(The following proceedings took place at the side bar outside the hearing of the jurors).

THE COURT: Mr. Welch, you just told me you gave all reports relating to this witness from the F.B.I.

MR. WELCH: All 3500 material in this case. Mr. Sackman has not made any written reports in relation to these defendants.

THE COURT: Are there other F.B.I. reports?

MR. WELCH: They are written by the F.B.I. agents, summaries of what Mr. Sackman told them.

THE COURT: Produce those. I direct you to produce those.

MR. WELCH: There are elements in there that are irrelevant to the issues here. May we submit them to the court?

THE COURT: Yes, submit them to me.

MR. WELCH: I can hand them to Your Honor right now.

(Hands documents to the court).

MR. BRINDISI: Your Honor, for the benefit of---

THE COURT: Proceed Mr. Brindisi.

MR. BRINDISI: I would like to see those reports.

THE COURT: You can see them at the appropriate time. Proceed with your cross-examination. Proceed as far as you can.

(The following proceedings took place in open court before the jury).

BY MR. BRINDISI:

Q How were you working in August 1972?

A Yes.

Q In what capacity?

A Selling insurance.

Q Selling insurance. And how much money did you make a year?

A Oh it was on a commission basis, so it is hard to say. In the insurance business you get your checks at the end of the month.

Q Approximately?

A $250.00 to $300.00.

THE COURT: I can't hear you. Keep your voice up.

THE WITNESS: $250.00 to $300.00.

BY MR. BRINDISI:

Q Per week?

A Yes.

Q Did you at any time get any assistance from the Government either financial or any other way to help you meet your obligations?

A No sir, not to me. My family obligations is what you are talking about?

Q Any of them.

A I was reimbursed for traveling expenses for my car.

Q The Government paid you for traveling expenses?

A Partial renumeration.

Q That commenced in August 1972?

A Right.

Q You indicated that you were working on some case with the

F.B.I., which involved either one or more of these defendants; is that right?

A Yes.

Q And that was prior to September 18, 1972?

A Continuing investigation. I don't follow your question.

Q I am not trying to confuse you.

THE COURT: Please just state your question. If you don't understand them Mr. Sackman, I will make them reframe them so that you do understand them.

THE WITNESS: Thank you.

BY MR. BRINDISI:

Q Did your investigation continue past September 18, 1972?

A Yes it did.

Q Regarding the matter that you were working with the F.B.I. on during August 1972?

A Yes.

Q When you borrowed this money was it a loan to you?

A Absolutely a loan to me.

Q Was that the original intent?

MR. WELCH: Objection to the form of the question. Mr. Sackman can say what he understood at the time or what he heard at the time.

THE COURT: That s right. Sustained.

BY MR. BRINDISI:

Q You were involved in some conversations with one or more of the defendants; is that correct?

A Yes.

Q And this money that was given to you was that in regard to these other transactions that you were involved with?

A No, it was a loan to clear up my personal bills so I could continue to do the work they wanted me to do.

Q You had some personal obligations?

A Yes. My wife has multiple sclerosis and I had bills of my own and I could not do the work for Al Marrone and King that they wanted me to do.

Q They were using you?

A I think so, yes.

Q They were also using you in August 1972?

A They came to me on fraudulent stock deals.

MR. MANGANELLI: Objection Your Honor. It is prejudicial.

THE COURT: Sustained. Strike it out.

BY MR. BRINDISI:

Q You talked about being used by the defendants?

A That is why I went to the F.B.I.

Q And you went to them in August 1972?

A Yes.

Q Yet you still-- you were being used in September 1972?

A Yes.

Q Yet you still borrowed money from them?

A Yes, because I desperately needed this money.

Q You tell the F.B.I. that you needed this money?

A Yes, and they wouldn't give me it. They knew it, and that is why they used me.

Q Did the F.B.I. say to you that that is why they used you?

A No. I volunteered for the work with the F.B.I. in August.

Q When you volunteered did you indicate that you had financial problems? Is that correct?

A No I didn't indicate I had financial problems at that time, to the F.B.I.

Q Didn't you have financial problems at this time?

A Nothing that I couldn't take care of at that time.

Q About a month later you needed $4,000.00?

A Yes.

Q And now this $4,000.00, was that given to you as front money?

A It was given to me as a loan.

Q Do you know what front money is?

A Yes I do.

Q What is front money?

THE COURT: Mr. Brindisi, may I suggest

when you cross-examine you may press leading questions, and I think it will shorten and make your cross-examination more effective perhaps.

MR. BRINDISI: I would like to have this witness answer this question.

Q What is front money?

A That is money advanced to somebody to do something prior to the production being put together. In other words, advancing expenses or monies to get to the ultimate goal of the deal being finished.

Q Did you ever have any discussion with Mr. King about legitimate transactions?

A Yes we did.

Q Did you ever ask for front money regarding those transactions?

A No I did not.

Q Were you supposed to go into some real estate deal?

A I gave Mr. King a check which has---

THE COURT: Did you go into a real estate deal with him?

THE WITNESS: If he made money on narcotics---

THE COURT: Strike it out.

THE WITNESS: Your Honor, this is the

truth.

THE COURT: Strike it out. We will take a short recess.

(At this point the jury retired from the courtroom and the following proceedings were had).

THE COURT: Mr. Sackman, I direct you to stop volunteering in this case or you will wind up in jail for contempt of court. Bring the jury back. Just answer questions. Mr. Brindisi, I direct you to ask leading questions because you are setting up these kind of situations with questions that are not leading. You are cross-examining and I direct you to ask leading questions that confines the answer.

(At this point the jury returned to the courtroom).

BY MR. BRINDISI:

Q You said you borrowed this money on September 18, 1972; is that right, sir?

A Yes.

Q Was that at the Pin-O-Rama, that this money was given to you?

A No sir.

Q You don't recall?

A It was not the bowling alley.

Q You said it was what, the Ramada Inn?

A Ramada Inn.

Q You met Mr. King at the bar?

A Yes, I met him at his home.

Q And you both went to the Ramada Inn together?

A Yes.

Q And while you were there Mr. Marrone came; is that correct?

A Yes.

Q Approximately how long had you been there when Mr. Marrone arrived?

A Perhaps a half hour.

Q And you and Mr. King were seated at the bar; is that correct?

A Correct.

Q When Mr. Marrone arrived you said some discussion took place; is that true?

A No sir.

Q You didn't talk to Mr. Marrone?

A No sir.

Q All right, you tell me what happened?

A We were sitting at the bar, we had a drink.

Q This is you and Mr. King?

A And we had a drink. Somebody motioned to King and Mr. King said, "wait here a minute and then come on out."

Q You see anybody motion to Mr. King?

A No I did not.

Q So you don't know whether or not anybody did actually motion to him; is that correct?

A Yes sir.

Q Then Mr. King left the bar and came back how long thereafter?

A He didn't come back.

Q He didn't come back at all?

A No.

Q You waited and joined him?

A That's right.

Q And then who was present?

A He was telling things to Al Marrone in the lobby. They started walking down, they were very close, whispering, and I thought we were going into the motel, and we went through a mase of halls and went on out through the entrance.

Q And you went into a car?

A Mr. Marrone's Cadillac.

Q Had you discussed with Mr. Marrone before that afternoon the borrowing of the $4,000.00?

A Yes I had.

Q When was it that you discussed this the first time?

A When I came back from Florida.

Q When was that?

A I don't recall the exact date.

Q Was it a few days before the 18th? Was it weeks? The best of your ability.

A Within a week before.

Q About a week before you talked with Mr. Marrone about the loan?

A Within a week. I don't know when it was exactly.

Q You tell him that this $4,000.00 was to clear up your personal obligations?

A Absolutely.

Q Was there any discussion about interest or anything else at that time?

A There was no discussion of interest at that time. All I asked for was a loan.

Q You asked Mr. Marrone or asked Mr. King for the money?

A I asked both of them. I asked Mr. King first and he said Mr. Marrone might be able to arrange it more quickly than he could.

Q Isn't it a fact that the money wasn't Mr. King's in the beginning, but Mr. Marrone's?

A I always thought it was somebody higher. They made me believe that it was somebody above them in the organization that gave the money.

Q In the organization?

A That is what I thought.

Q Did you have any doubt when you asked for it that Mr. Marrone was lending you this money?

A As a matter of fact I am sure it was not Mr. Marrone's money, on prior conversations.

Q With Mr. Marrone?

A Mr. Marrone said---

Q Was Mr. King present?

A I believe he was.

Q Were you supposed to take a trip to Panama?

A Yes.

Q When was that supposed to take place?

A That was supposed to take place shortly after the loan was placed.

Q Did you ever discuss this matter with Special Agent Robert J. Kolavar?

A Yes I did.

Q Did you tell him what took place in regards to those discussions on September 18, 1972?

A Yes I did.

Q And it is my understanding that Marrone handed you the money; is that correct?

A Correct.

Q And it was in a white envelop?

A Correct.

Q And you testified there was forty one hundred dollar bills; is that true?

A Correct.

Q And this money was passed to you in Mr. Marrone's Cadillac?

A Yes.

Q By Mr. Marrone?

A Correct.

Q And you didn't open the envelop at that time?

A No sir.

Q You didn't bother to check to see how much money was in the envelop?

A No sir.

Q Then you went home and for the first time you opened the envelop; is that true?

A Yes.

Q And you found forty one hundred dollar bills and you took the serial numbers, marked them on the envelop itself?

A Correct.

Q Then the following day you gave that envelop to Special Agent Kolavar?

A I don't know if I gave it to him the following day, I gave it to him within the next few days after. I don t recall the exact time.

MR. BRINDISI: May I approach the witness Your Honor?

THE COURT: Sure.

BY MR. BRINDISI:

Q Government's Exhibit 1 marked for identification indicates R.J.K. Would those be the initials of Robert J. Kolavar?

A I assume but I don't know.

Q And there is on there September 19, 1972. That would be the day after you got the money; is that true?

A Yes.

Q Would that refresh your recollection as to when you gave Mr. Kolavar the envelop with the serial numbers on it?

A I am not sure of the exact date I gave it to him.

Q But it could have been the following day, September 19, 1972?

A I don't know what that marking means on there. I had not put it on.

Q When you gave the envelop to Mr. Kolavar you told him that you had this $4,000.00.

A Yes I had.

Q Did you give him the money also?

A No sir. I used the money to clean up my personal bills.

Q Did Mr. Kolavar tell you to give the money back to Mr. King or Mr. Marrone?

A I assumed I was going to pay it back to them, yes.

Q Did he tell you that you should give it back?

A No.

Q Did you inform him at this time that you thought this money came from a big organization?

A No sir.

Q Had you told him anything about organized crime prior to September 18, 1972?

A To be specific, I don't know what you mean about organized crime.

Q I don't either. You mentioned something earlier about the head of a local organized crime family residing in Utica by the name of Joseph Falcone; is that correct?

A Yes.

Q You also indicated earlier that you went to a garage and it was J. F. Body Works?

A J. F. Auto Sales I said.

Q And do you know that was Jim Ferris Auto Sales?

A I don't know whose auto sales it was.

Q Did you ever meet Jim Ferris?

A I met a man by the name of Jim. I don't know his last name.

Q So the only thing you told Mr. Kolavar when you gave him the envelop was that you borrowed $4,000.00 from-- did you tell him about King and Marrone or just anyone?

A King and Marrone.

Q You didn't tell him anything else about your suspicions that this money may have come from a so-called higher source?

A I didn't know where the money came from.

Q Your testimony is that you don't know where the money came from except Mr. Marrone handed it to you?

A They told me it came from somebody else. I assumed it came from a higher source.

Q Who told you that?

A Mr. King and Mr. Marrone, on numerous occasions.

Q They tell you that on September 18, 1972?

A Yes. They didn't say who though.

Q Did you tell Mr. Kelavar that you borrowed this money from King and Marrone on the following day, if it was the following day that you gave him the envelop, that you were afraid if you didn't pay the money back violence would be caused to you?

A No I did not.

Q When was the next time after that that you met with the F.B.I. concerning any transactions with these defendants?

A I met them practically on a daily basis for many months because I was gathering a great deal of information.

Q You were working with the F.B.I. daily during this entire transaction; is that what you are saying?

A Correct.

Q After September 18, 1972 was it the next time that you met with any of the defendants?

A I had numerous meetings with them on almost an every other day basis. I was in Whitsboro during the noon hours; I met Jim Talerico on numerous occasions. The other two gentlemen I only met at the times I said.

Q At any time when you met with the defendants did you also meet with the F.B.I. to report the conversations that you had with the defendants?

A Within 24 hours.

Q You said you would see them on a daily basis, the F.B.I. and the defendants?

A Yes.

Q Mr. King and Mr. Talerico; is that true?

A Yes.

Q After September 18, 1972 when was the next time there was any conversation about the original loan, the $4,000.00?

A We had conversations while we were doing our other business.

Q Was there any discussion about force or violence being used on you in any of those discussions?

A Just Mr. King would say we got to get the money on time or you could be in trouble.

Q Did you report this back to the F.B.I? Did you report that to the F.B.I?

A Not the early conversations because there were no real threats in the early conversations.

Q Were there any threats at all in the early conversations?

A No. I would say the threats started-- well at one time Mr. King said--

Q Tell me when?

A I can't give you the specific time.

Q Approximately? How many days or weeks after the loan?

A It was an on going thing. I can't give you specific times.

Q Was there any threat on the day the money was given to you?

A Yes.

Q What was said and by whom?

A Mr. King said that the money must be repaid on time and there was $1,000.00 interest. It would be five for four.

Q Where was he when this was said?

A Sitting in front of me on the passenger side of the Cadillac, on the front seat.

Q And Mr. Marrone was behind the driver's seat?

A Correct. I was in the back seat.

Q Mr. Marrone handed the envelop back to you while you were on the back seat?

A Correct.

Q To the best of your recollection tell me exactly what each man said to you at that time?

A Mr. King told me that the money must be repaid on time and not to take the money unless I was sure I planned to repay the money, and I told him I was pretty sure I would repay it. And Mr. Marrone said, "what do you mean pretty sure?" And this upset Mr. King, and he said, "are you sure?" And I said, "Yes, I am sure."

THE COURT: All right, we will take our luncheon recess.

MR. BRINDISI: Thank you.

(At this point the jury retired from the courtroom).

THE COURT: Mr. Brindisi, I have examined these documents which the Government has made available, and I don't think any of them--- I have not looked at them all-- but what is your position, that it is not 3500 material?

MR. WELCH: That is correct. It is not a statement of witness, nor are they relevant to the issues that he testified to.

THE COURT: I have no way of telling whether they are relevant. I don't propose to read through all of this. I think you should go through them first and tell me which parts you think-- or do you think they are all relevant?

MR. WELCH: We submit they are all relevant. If Your Honor please, we will go through and find those things that mention the name J. Schuyler Sackman.

THE COURT: I don't know the source is.

MR. WELCH: I think on the right---

THE COURT: You read it first and tell me what you think should not be turned over. Mark it in red pencil what you think should not be turned over.

(Documents handed to Mr. Welch).

MR. WELCH: Your Honor, at this time may I substitute a Xerox copy of Exhibit 1.

THE COURT: Yes.

MR. WELCH: Defense counsel has already received Xerox copies of the copy I am substituting.

THE COURT: I suggest that you read these over, the things that I turned over to you, during the luncheon hour.

MR. BRINDISI: Yes sir.

THE COURT: 2 o'clock.

(Whereupon at 1:05 P.M. o'clock a luncheon recess was taken until 2:00 o'clock P.M.)

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AFTERNOON SESSION

APPEARANCES: SAME AS MORNING SESSION

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MR. WELCH: Your Honor, may we approach the bench to discuss the Jenks Act material?

THE COURT: Yes. All right.

MR. WELCH: I along with the Agents of the F.B.I., and other associates have just gone through this material again, and the only part of that report that might arguably be Jenks Act material is the article on the top, which is a description by a Special Agent after having heard the tape recordings involved in this case and is not the witness Sackman's statement.

THE COURT: Can you establish that by Kolavar?

MR. WELCH: Yes Your Honor.

THE COURT: Do you want him called to testify to that or will you stipulate if called he made this after hearing the tape recordings. Very definitely second hand. Do we have to go through the motions?

MR. BRINDISI: I don't know what it is. It is a document, yes.

THE COURT: It is a document that he produced, which the witness has made the statement that this witness knew of. It is a report made by Special Agent Robert J. Kolavar, who based his report on the tape recordings.

I am asking you to stipulate if Kolavar was called that is what he would say.

MR. BRINDISI: And Mr. Welch makes that stipulation?

MR. WELCH: Yes.

MR. LONGERETTA: I so stipulate.

MR. MANGANELLI: I so stipulate.

MR. SCHOLL: And I do too.

MR. BRINDISI: Yes.

THE COURT: Then it is not 3500 material. What about the rest of it?

MR. WELCH: All of it was prepared by F.B.I. Agents after interviewing Mr. Sackman.

THE COURT: Does it have anything to do with this case?

MR. WELCH: No, it has something to do with Mr. Sackman's role as an informer on the other case.

THE COURT: I will have to look it over

and make that decision. All right. How many witnesses is it going to take you to establish chain and why do we need to establish the chain?

MR. WELCH: I am willing to stipulate to the chain that existed.

THE COURT: What is the sense of putting the chain in?

MR. BRINDISI: We heard the tapes Your Honor.

THE COURT: All right.

MR. BRINDISI: The transcripts were not the true transcripts of the tapes that we heard.

THE COURT: I am sure they probably were not.

MR. BRINDISI: And Mr. Welch just furnished us with new transcripts, and I would suggest we hear them again to find out whether they are true and accurate transcripts of the tapes we heard.

THE COURT: No. I am not going to delay the trial to do that.

MR. BRINDISI: We got the transcripts this morning.

THE COURT: You should have asked for them earlier. No, I will not let the jury see the transcripts now.

MR. MANGANELLI: On behalf of the defendant Talerico, I informed the United States Attorney I did propose to introduce the tapes.

THE COURT: I am talking about tracing them, putting on a witness and tracing them at this time. What difference does it make. I don't see that you need to go through all of that. It only delays the trial. If this witness says they are accurate transcripts of what we heard of the conversations he had, that establishes it.

MR. MANGANELLI: I have no objection to that.

THE COURT: He said he wants the chain. I don't see that he needs the chain. You said you wouldn't stipulate to the chain. For the life of me I don't know why not?

MR. BRINDISI: If he makes that representation on the record as to the chain, that is all right.

THE COURT: If the witness testified

that these are transcripts of what he heard, that should be sufficient.

MR. BRINDISI: All right.

THE COURT: What we want to know is when did you last hear them?

MR. WELCH: He last heard the recordings on this tape on Monday, the 19th of February.

THE COURT: Who can testify that the tapes are in the same condition as they were then?

MR. WELCH: Special Agent Kolavar can.

THE COURT: That is all we need to establish that the tapes were in the same condition now as when this witness last heard them.

MR. BRINDISI: Another thing, I would like to make an offer of proof on the cross-examination of the witness Sackman in regard to his illegal business transactions. I read the case as Your Honor pointed out yesterday and I also read similar footnotes in the Solvay case, and the trial court in that case allowed defense counsel to get into evidence, which would normally be excluded due to the fact the main witness was a government informer. This is not like the ordinary business, according to the Solvay case. We have documentary evidence---

THE COURT: I don't care.

MR. BRINDISI: Your Honor, I want to put this on the record as an offer of proof.

THE COURT: Go ahead.

MR. BRINDISI: We have documentary evidence that Sackman entered into negotiations with an attorney, Percy Almeradi in Puerto Rico and also with a Doctor down there named Dr. Steila. Can I get the documents?

THE COURT: Yes.

MR. BRINDISI: These documents show that there was an agreement with Almeradi on the 2nd of June 1970, which agreements were signed by Sackman, in which he agreed to get a mortgage commitment of $454,000.00. The proof will be that Almeradi gave to Sackman the sum of $5,456.00 to obtain this mortgage commitment, and that is the last time Mr. Almeradi ever saw Mr. Sackman again, that Mr. Sackman did nothing to complete this transaction and left with the money.

THE COURT: All right.

MR. BRINDISI: He also entered into an agreement with Dr. Steila, the Medical Director in Puerto Rico, and the agreement was he was to obtain a mortgage for the sum of $425,000.00 to build a hospital there, and for that sum he was to get $20,000.00. He got paid the $20,000.00 and that was the end of that transaction.

THE COURT: When was that?

MR. BRINDISI: That was May 8, 1970.

THE COURT: I preclude you from going into that, both on the ground that the law in this circuit is clear that misconduct of a witness not involved in the commission of a crime is inadmissible and also in the exercise of my discretion it would only confuse this jury and divert the attorneys and get them into by-ways with which we are not involved.

MR. BRINDISI: Your Honor, there was a transaction with a person named Pete LoConti-- we discussed it in chambers-- that Sackman within the last year or so went to Mr. LoConti who had a son in Viet Nam and LoConti wanted the boy out of the service, and Sackman told him he could do it for $18,000.00. He took $3,000.00 from Mr. LoConti and that is the last time Mr. LoConti heard from Mr. Sackman. The reason I am making these offers---

THE COURT: You don't have to apologize. You have a right to make them.

MR. BRINDISI: The Government is trying to portray this man as a respectable business man from Syracuse; that he was a mortgage broker, and this is not entirely true. That is why I think it is relevant to the issues.

THE COURT: I exclude it on the same grounds as I just stated for the record.

MR. LONGERETTA: We all join in with those offers.

MR. BRINDISI: There is one other thing. He filed a petition in bankruptcy in 1971 in which he showed personal loans amounting to $91,000.00, but he never filed an income tax return on the money he extracted from these people that I mentioned.

THE COURT: No, I am going to exclude it again on the same grounds. We are getting into too many collateral matters here.

MR. BRINDISI: Thank you Your Honor.

THE COURT: Does the Government have any request to charge?

MR. WELCH: Yes Your Honor.

THE COURT: When are you going to get them to me?

MR. WELCH: We are preparing them now, but they depend on the defense.

THE COURT: Quit worrying about the defense. Get me your request to charge. I want them in the morning.

MR. WELCH: Yes Your Honor.

MR. BRINDISI: We don't have any at the present time.

MR. MANGANELLI: I don't have any now.

THE COURT: I want them all by tomorrow morning. You are entitled to a ruling on request to charge before you sum up. I can't do it if you give them to me too late.

MR. MANGANELLI: Would it be permissible to submit them in longhand? I don't have a secretary.

THE COURT: Sure. Provided there are not too many of them. You don't have to submit them if you don't want to. It is up to you.

MR. MANGANELLI: Thank you Your Honor.

(At this point the jury was returned to the courtroom and the following proceedings took place in open court).

THE COURT: All right. Proceed.

How would it be if we moved the counsel table down here and put defense counsel table behind the Government?

MR. BRINDISI: Fine.

THE COURT: All right. We will get a couple of Marshals.

CROSS-EXAMINATION (Continuing)

BY MR. BRINDISI:

Q Now Mr. Sackman from the time you first became an informer for the F.B.I., in August 1972 to the present time, have they given you any kind of consideration by means of financial aid?

A I have been reimbursed for travel expense.

Q And that is it entirely? Has your wife been paid by them?

A No.

Q Nothing at all?

A No.

Q When you were first dealing with the defendants as an agent for the F.B.I., in August 1972, did there ever come any time when you had electronic bugging equipment ever put on you in any conversation you may have had with them during that period of time, during August and September 1972?

A You asked me three questions. The first question was am I an agent for the F.B.I? I am not.

THE COURT: The question is bad in form.

MR. BRINDISI: I will rephrase the question.

BY MR. BRINDISI:

Q In the conversations you may have had with the defendants in August and September 1972, did you use electronic bugging devices?

A No.

Q The first time you used electronic bugging devices was in November 1972; is that correct, sir?

A Provided by the F.B.I., the answer is yes. That is the way you phrased the first question.

Q That's right. I think you testified you yourself had some kind of tape cartridge that you used in a telephone conversation; is that right?

A Yes.

Q When was that? When did you first do that?

A Many times.

Q Did you use them in any conversations that you had with these defendants or any of these defendants?

A Yes.

Q For the first time. Can you give me the specific date?

A I don't recall.

THE COURT: Just keep your voice up.

THE WITNESS: I am sorry Your Honor.

BY MR. BRINDISI:

Q Was it done on occasions before November 11, 1972?

A Yes.

Q Did you give those tapes to the F.B.I?

A Yes.

Q And were any transcripts made of those tapes?

A No, not to my knowledge.

Q These tape recordings that you made before November 11, 1972, did they have anything to do with this transaction of September 18, 1972?

A No.

Q So the only equipment that you used in regard to any electronic eavesdropping device, regarding the transaction of September 18, 1972, was equipment given to you by the Government; is that correct? Or am I wrong?

A Would you repeat the question.

Q The only electronic bugging devices that you used concerning the transaction of September 18, 1972 was equipment furnished to you by the Government; is that correct?

A Yes.

Q You didn't use any of your own equipment to record any conversations?

A Yes I did.

Q Other than the telephone?

A No.

Q Just so I have an understanding, the only equipment that was used was yours alone--- strike that-- the only equipment that you used that belonged to you was for the recording of the telephone conversation with James Talerico; was that correct?

A I recorded many telephone conversations.

THE COURT: No. No. Listen to the question. You used two kinds of equipment, you told us?

THE WITNESS: Yes.

THE COURT: Your own and that supplied by the F.B.I?

THE WITNESS: Yes.

THE COURT: Did you use any other?

THE WITNESS: No sir.

BY MR. BRINDISI:

Q Your own equipment that you used, was that used in the conversations involving a telephone call that you made to James Talerico?

A Yes.

Q And you gave that tape to the Government; is that right?

A Yes.

Q Now when you got the loan from, you indicated Al Marrone and Louis King at the Ramada Inn, the following day or soon thereafter you gave the money to Mr. Kolavar--- you gave the envelop with the serial numbers of the money to Mr. Kolavar; is that correct?

A Yes.

Q Did you at that time tell him that you were being shylocked in any way?

A Yes.

Q Did he tell you at that time that that was a crime? Did you know that that was a crime to be a shylock?

A Yes.

Q Now the actual bills that were given to you, did you give them to the Government?

A No sir.

Q Didn't the F.B.I. Agent tell you that that would be evidence in this case?

MR. WELCH: Objection Your Honor. That is hearsay, what the F.B.I. told him.

THE COURT: Yes. Sustained.

BY MR. BRINDISI:

Q In any event you never gave him the money, you only gave him the envelop with the serial numbers?

A Yes.

Q And he told you to take the money and use it---

MR. WELCH: Objection Your Honor.

MR. BRINDISI: Strike that.

THE COURT: Finish your question.

BY MR. BRINDISI:

Q And you told him you were going to keep the money and use it for your own personal obligations; is that correct?

A May I have the question again please.

MR. BRINDISI: Will the reporter repeat it.

(The Court Reporter repeated the question as above recorded).

THE WITNESS: Yes.

BY MR. BRINDISI:

Q And you did use that money for your own personal obligations; is that true?

A Yes.

Q When you were given this money, were you told that you would not have to pay that money back if the deal in Panama went through?

A No. It was going to come off the top. If the Panama deal went through, the loan would be paid off on those.

Q The $4,000.00?

A No, it was $5,000.00.

Q Was this told to you on September 18, 1972?

A No.

Q When was it first told to you?

A A few days before, probably.

Q Do you recall having a conversation with Secret Service Agent Robert J. Kolavar on November 2nd, 1972?

A I had numerous conversations with Robert J. Kolavar.

Q That is not my question. Do you recall having a conversation with him on November 2nd, 1972?

A I recall having conversations.

Q Did you at that time tell him that King and Marrone after handing you the money told you that you would not have to pay back the $4,000.00 if the deal in Panama was consummated on their option; you tell him that at that time?

A Yes.

Q Did you also tell him that King and Marrone hinted that repayment of the money was expected if the deal in Panama did not go through?

A Yes.

Q So if the deal in Panama did go through you were not to pay back the money?

A No, I was to pay the money off the profits of the deal. I had to pay the money back, either from the profits of the deal or from my own source of funds available.

Q Maybe I am misunderstanding this. Did you tell him on November 2nd, 1972, and I am now referring to Mr. Kolavar, that King and Marrone, after giving you the money, told you that you would not have to pay back the money, the $4,000.00 if the deal in Panama went through?

A I told Mr. Kolavar---

Q Did you tell him that at that time?

A Oh yes.

Q Did you also tell him at that time that they hinted to you that repayment of the money would be expected if the deal in Panama did not go through?

A Yes.

Q You told him that?

A Yes.

Q Did you also tell him at that time that you would have to pay interest on the money if the advance came to be recognized as a loan?

A Yes. No, it was a loan to start with.

Q Just listen to the question I ask you and answer then. Did you tell him on November 2nd, 1972 that they told you that you would have to pay interest on the money if the advance came to be recognized as loan? Did you tell him that on November 2nd, 1972?

A I am not sure.

Q You are not sure?

A No sir.

Q Did you tell him if it was to be recognized as a loan that there was going to be an interest payment of $1,000.00 per month on the principal of $4,000.00?

A Would you repeat that question.

MR. BRINDISI: Mr. Reporter.

(The Court Reporter repeated the question as above recorded).

THE WITNESS: I am not sure of that.

BY MR. BRINDISI:

Q You are not sure of that either?

A No.

Q Are you saying that you did not tell him?

A No, I am not saying that. I said I am not sure.

Q You are not sure. All right. Did you also tell him that King and Marrone never completed the arrangements for the Panama trip?

A Yes I did.

Q And that shortly after that you were told that you would have to repay the money; is that true?

A Shortly after that that I would have to repay the money?

Q Yes.

A Yes.

Q So up until that time when King and Marrone failed to complete the arrangements for the Panama trip, you didn't have to repay the money?

A No, that is not true.

Q Isn't that what you told Mr. Kolavar on November 2nd, 1972?

A I am not sure of that.

Q You are not sure?

A No sir.

Q Was your memory fresher on November 2nd, 1972, concerning this transaction as it is today in court?

A It probably was.

Q Sure. Because it was closer to the time of the transaction; is that correct?

A Yes sir.

Q And did they tell you at that time— strike that please. Did you tell F.B.I. Agent Kolavar at that time that you were informed by King and Marrone that it was not their money?

A Yes.

Q Is that true?

A Yes.

Q But someone who had no connection with the Panama deal;

is that true?

A I don't know for sure whether it had a connection with the Panama deal or not. At one point I thought there was a connection.

Q I am asking whether or not you told that to Mr. Kolavar on November 2nd, 1972?

A I am not sure.

Q You are not sure. Did you tell Mr. Kolavar on that date that you advised King and Marrone that you were unable to make payments because of your financial condition?

A On what date was this?

Q On November 2nd, 1972.

A Yes.

Q O.K. Now was any physical force used on you before November 2nd, 1972 in any way to get back this $4,000.00?

A Physical force? No.

Q All right. Now did you tell the F.B.I. that you had a deadline to repay this money?

A Yes I did.

Q And when was the first time that you told them that?

A I am not sure.

Q Well I think you told me that the deadline was October 18th?

A October 18th?

Q Of 1972. Is that correct?

A Yes.

Q Did you tell them prior to October 18, 1972?

A Yes.

Q Could you give us an approximation after how long before October 18th you told him that?

A Perhaps a few days.

Q A few days?

A Yes sir.

Q When you told the F.B.I. that you had this deadline on October 18, 1972, you tell them that you were in fear of having violence against you?

A Yes I did. And they told me they could not get me the money. I asked them to get me the money and they said they couldn't get me the money.

Q And now you are appearing for the F.B.I. as an informer from August 1972 and you go up a few days prior to October 18, 1972, and you asked them for $4,000.00, and the Government told you that they could not come up with $4,000.00; is that your testimony?

A That is correct.

Q At that time you were also investigating other possible crimes, according to your testimony, that the defendants may have been involved in; is that true?

A Yes.

Q And the F.B.I. was completely aware of your part in that investigation?

A Yes sir.

Q I think you said that you voluntarily went to the F.B.I. office to assist them; is that true?

A Correct.

Q Let me ask you this, were you being questioned by the F.B.I. in relation to any crime you may have committed before you volunteered your assistance to the F.B.I?

A No sir.

Q Or were you involved in illegal operations of some sort, and I don't care what they are, involving any of these defendants prior to the time that you went to the F.B.I. in August 1972?

MR. WELCH: Objection Your Honor.

THE COURT: Sustained.

BY MR. BRINDISI:

Q After you discussed this with the F.B.I. a few days before October 18th, 1972, and they told you they could not come up with the $4,000.00, when was the first time after that that you had a meeting with any of the defendants?

A Probably a day or two. I met with them constantly during that period of time.

Q When you were informing for the F.B.I. regarding other transactions that you were involved in with these defendants, and I am not talking about the transaction of September 18, 1972, were you cooperating with the thought in mind that these defendants could be arrested for some of their illegal activities?

A Yes.

Q And was that arrest imminent?

A I don't know.

Q But you knew at the time you borrowed this money that you were working along with the F.B.I., with the thought in mind that the defendants would be arrested, at least some of them would be arrested?

A Yes.

Q And you were talking to various members of the F.B.I. daily about all of these transactions which occurred between yourself and the defendants, or at least some of the defendants; is that true?

A Two defendants. Talerico and King.

Q Talerico and King; is that true?

A Yes.

Q You said a few days later-- strike that. Did you meet with them on October 18, 1972, with any of these defendants on October 18, 1972?

A I would have to check back into my records at where I was on October 18.

Q Do you have records of where you were on October 18?

A Some of the days.

Q Are they in this building?

A Some of them are in my home. I can't get into my home because---

Q Don't tell me that. Do those records contain any information that would deal with the transaction of September 18, 1972?

A No.

Q Would it have dates when you met with these defendants from September 18, 1972 until the time of their arrest on this particular charge?

A Some calendar dates may show I met with Mr. King and Mr. Talerico.

Q Would you produce those for me?

MR. BRINDISI: I ask that those be produced.

A I can't get into my home.

THE COURT: Call it to my attention at the end of the day.

BY MR. BRINDISI:

Q When you met with the defendant King or Talerico a few days after October 18, 1972---

MR. MANGANELLI: Objection, on the grounds this testimony may be prejudicial to my client. No proper foundation.

THE COURT: May I have the question?

(The Court Reporter repeated the question as above recorded).

MR. MANGANELLI: The purpose of the meeting hasn't been established.

THE COURT: He testified about it on direct, didn't he?

MR. BRINDISI: I thought he had.

THE COURT: My recollection is he did. Put your question.

BY MR. BRINDISI:

Q Did you meet with any of the defendants after October 18, 1972?

A Yes.

Q And if so, what defendant did you meet with and at what time and place?

THE COURT: What?

BY MR. BRINDISI:

Q (continuing) ---concerning the transaction of September 18?

A On October 30th and November 11th, Novem [illegible], November 16th and November 18th.

MR. MANGANELLI: Again I object on the ground no proper foundation.

THE COURT: Overruled. He met on October

30th. Overruled. It is a preliminary question. He met with some defendants, some or all.

BY MR. BRINDISI:

Q Now what defendants? What defendants did you meet with after October 18, 1972?

THE COURT: Well---

Q You said you met on those various dates?

A Yes.

THE COURT: Can't you make your question more specific?

BY MR. BRINDISI:

Q It is my understanding the first time after October 18, 1972 that you saw any of these defendants was on October 30, 1972?

A That was not your question.

THE COURT: Was that the first time you met with any of them?

THE WITNESS: No. I met with some of them before that.

BY MR. BRINDISI:

Q When?

A I don't recall the exact date.

Q How many times did you meet with them after October 18th and October 30, 1972?

A Many times.

Q Daily?

A Almost every day or every two days.

Q During this period of time did you have conversations with them or any of them concerning the transaction of September 18, 1972?

A Once in awhile we did. Not too often.

Q Was there any threats or anything made against you on those occasions when you discussed with some of these defendants or all of them--- which defendants did you talk to?

A Mr. King and Mr. Talarico.

Q Those were the only two?

A Yes.

Q During that time when you met with them daily or every other day, between October 18, 1972 and October 30, 1972, you indicate some threats were made again?

A Yes. Reminders.

Q Reminders?

A Yes.

Q Will you tell me exactly what was said by the defendant King and what you said to the defendent King on those occasions, if you can recall?

A He reminded me that the note was due and that the money had to be paid, and I told him I was working on it, and he asked how I was coming along in gathering the funds.

Q During this period of time---

THE COURT: Have you finished your answer that he asked you to tell him what he said?

THE WITNESS: Many times he told me he didn't want to be in the middle, and that I should get the money, and I am only going to get hurt. He said these people are not people that you fool around with. He told me Al was a bad guy and that Al's friends were bad guys, and I should have the money.

BY MR. BRINDISI:

Q At any time did he threaten you in any way, prior to the 18th?

A Prior to the 30th.

Q I am talking about between September 18th and say December 1st of 1972?

A Yes he did.

Q And now getting back specifically between October 18th and October 30th, did he threaten you at any time?

A October 18th and October 30th? Just by veiled threats.

Q Veiled threats?

A Yes. He would say, "If you don t have it, you could get in trouble."

Q And did he say that he would be the one that would be in trouble?

A No.

Q Did he say anywhere that he would use force on you himself?

A Not between the 18th and the 30th.

Q Now getting back-- did you relay these conversations to the F.B.I. about these threats, veiled threats?

A Yes I did.

Q What did they do?

A I don't know.

Q Did they tell you anything after you relayed these messages to them?

A They took the information I gave them and did with it whatever they were to do. I don't know what they did with the information.

Q And that is all?

A Yes.

Q And now on October 30th you had a conversation with who? You said you had a conversation with somebody on October 30th?

A Yes.

Q With whom?

A October 30th, I had a conversation with Louis King.

Q Where?

A In front of the Howard Johnson's Restaurant, and then we walked over to his car and sat down in his car and talked some more, and then Mr. Zogby and the unknown person stopped in the car and I gave you that information before.

Q Before October 30th, 1972, were you told that some people wanted to talk to you about the transaction of September 18, 1972?

A Yes.

Q Mr. King tell you?

A Yes.

Q What did he tell you?

A He told me that he had arranged for meetings where I could discuss the loan and see if I could get more time from them. He was going to try to help me get more time.

Q Did he tell you who these representatives were at that time?

A No.

Q Never said anything about them?

A No.

Q Did you go back and tell the F.B.I. that this meeting was going to be set up?

A Yes.

Q What did they do?

A They asked me if I thought I was going to have the money from some other source to pay them, and I told them I was still working on it, that I didn't have the money.

Q They offer to give you the money at that time?

A No.

Q At that time you were still cooperating with them about other illegal activities?

A Yes.

Q And you told them you had to have a meeting with representatives and they didn't offer to help you at all?

A Well they said that, you know, they would watch over the situation, and if I felt I was going to be hurt that they would be more careful about it and see what we could find out.

Q So you had to tell them that you thought you were going to get hurt before they would attempt to help you; is that what your testimony is?

A At that point?

Q At that point.

A I would say yes.

Q Now did they give you any electronic bugging device at that point so that you could record the conversations that you had with these various representatives, unknown to you, that you were going to have this meeting with on

October 30, 1972?

A No.

Q They didn't even suggest to you that you should have this equipment on you for the purpose of recording the conversations?

MR. WELCH: Your Honor objection. The witness can only testify to what he knows and what he saw and not what other people said to him.

THE COURT: Overruled.

THE WITNESS: Would you repeat the question again?

MR. BRINDISI: Could we have the question read back please?

(Court Reporter repeated the question as above recorded).

A No. At that time I thought I was going to be able to repay the loan at that time.

Q I see. So up to that time you had no thoughts of any violence against you?

A No, I wouldn't say that.

Q What did you feel?

A I felt if I was able to get the money together and pay them, there would be no violence.

Q That is what I am saying. You said up to that time you thought you could get the money and there would be no violence against you?

A I thought it was just a threat at that time.

Q You did not take it seriously?

A Yes.

Q Did you tell the F.B.I., that you took it seriously?

A Yes.

Q Did you tell them that you were worried about your life?

A I wasn't worried about my life.

Q Were you worried about getting hurt in some way?

A I was not worrying about being hurt that day. I was shocked to see the gun and the knife.

Q I will let you tell your story, but let me ask my questions.

A Yes.

Q You had no thought at that time that you were going to be hurt?

A I wasn't sure whether I was going to get hurt or not.

Q But you told the F.B.I., that you didn't know whether you were going to get hurt or not?

A I told the F.B.I., that I was pretty sure I would not get hurt, but I was not sure.

Q Did they offer to assist you in any way, knowing about it, this fact in your mind that you might get hurt?

A Frankly I was gathering a lot of other information.

Q Please answer my question.

THE COURT: Strike the answer.

THE WITNESS: May I have the question?

(The Court Reporter repeated the question as above recorded).

THE WITNESS: I would say yes.

BY MR. BRINDISI:

Q What did they offer you?

A Covering the situations to see what was going on.

Q What do you mean by that?

A Keep you under surveillance and make sure that they would see who was there and what was going on.

Q Did they do that?

A No. At my request they did not.

Q So they offered at that time to have someone tail you so that they could watch and protect you; is that correct?

A Correct.

Q And you refused that offer?

A Correct.

Q Is that right?

A Correct.

Q Now during this period of time between September and October 30th, you indicated you had no electronic eavesdropping equipment on you; is that right?

A That's right.

Q For the purpose of recording any conversations?

A In relation to this.

Q (continuing) --- that you had with the defendants; right?

A Correct.

Q When was the first time that you had any recording eavesdropping devices on your person?

A November 11th.

Q November 11, 1972?

A Oh no---- yes, I believe it was November 11th.

Q Was that when the telephone call was first placed to James Talerico?

A Yes.

Q Now between October 30, 1972 and November 11, 1972, did you have any meetings with any of the defendants?

A Yes.

Q Which defendants?

A Mr. King and Mr. Talerico.

Q How many?

A Numerous.

Q Daily?

A No, I wouldn't say daily.

Q Every other day?

A Fairly often.

Q Pardon me?

A Fairly often.

Q Fairly often?

A Yes.

Q And this is after you claim that someone put a gun to your head and a knife to your throat; is that correct?

A Correct.

Q And now after you had the gun put to your head and the knife to your throat, did you report that to the F.B.I?

A Yes I did.

Q At that time were you afraid of your life?

A Yes.

Q You were scared?

A Yes.

Q What did they do to you at that time?

A Had surveillance people with me.

Q Surveillance people with you?

A Yes.

Q Did they give you any electronic eavesdropping devices to use?

A Yes.

Q Did you use them between October 30th and November 11, 1972 in your conversations with these defendants concerning this transaction of November 11, 1972?

A No.

Q So for 11 days you were talking to these defendants on a continuous type basis after you had been threatened with a gun and a knife and you had no electronic eavesdropping devices on your body to record any of those conversations; is that your testimony?

A Correct.

Q Now once you were threatened with the knife and the gun, it is my understanding that you viewed certain photographs; is that correct?

A Yes.

Q And you made an identification of Mr. Zogby; is that correct?

A Yes.

Q When was that?

MR. WELCH: Objection Your Honor.

THE COURT: Why?

MR. WELCH: That testimony is not in this record.

THE COURT: It is now.

THE WITNESS: What was that question?

MR. BRINDISI: Could we have the record read back?

THE COURT: When was that?

THE WITNESS: When I first viewed the photographs?

BY MR. BRINDISI:

Q Yes.

A Approximately a week after.

Q So it was prior to November 11, 1972 that you viewed these photographs and you made an identification that Jack Zogby was one of the men in the car that threatened you on October 30, 1972; is that correct?

A Yes sir.

Q What happened then?

A What do you mean?

MR. WELCH: Objection. The question is very broad.

MR. BRINDISI: All right.

BY MR. BRINDISI:

Q What happened then between you and the F.B.I., if anything? Did you tell them that you were threatened with a gun and had a knife put to your throat, that you had to pay $4,000.00 back and $1,000.00 interest a month; you tell them this information?

A Yes.

Q And you positively identified Jack Zogby as the person in the car the week before November 11, 1972; is that correct?

A Yes.

Q And you knew that the defendant King and Talerico, you had all these conversations with them, you knew it and you advised the Government of that also?

A Yes.

Q Is that right?

A Yes.

Q And they didn't arrest anybody?

A No.

Q Is that true?

A Yes.

Q So the next time, on November 11, 1972, you had electronic eavesdropping devices placed on your person for the purpose of recording conversations; is that right?

A Yes.

Q You called James Talerico, is that true?

A Yes.

Q And I believe you said he said to come down to Utica?

A Yes.

Q And you met with him at Geraci's?

A Yes.

Q And you had some kind of a conversation with him that you were to see Lou King that day?

A Yes.

Q And it is my understanding, sir, and if I am wrong you correct me, you met with Lou King on that day?

Yes.

Q In the conversation you had with Lou King on November 11, 1972, did he in any way indicate to you that the money you got came from him?

A No.

Q Did he in any way indicate to you that he would cause violence upon you if you did not repay this money?

A No.

Q In fact isn't it true, sir, that you asked him to intercede on your behalf so that you would not have any problems with these people?

A Yes.

Q In fact that was the general nature of the conversation that you had with him throughout the entire proceeding, isn't it, between September 18, 1972 and December 1st, 1972?

MR. WELCH: Objection.

THE COURT: If the witness can answer he may. Overruled.

THE WITNESS: I would say generally he was interceding for me, yes.

Q Right. You asked him to help you; isn't that true?

A Yes.

Q And you asked him to go to people so that you would not get hurt; isn't that right?

Yes.

Q And you had known Lou King for how long a period of time?

A A few years.

Q Two years. Had you been to his house?

A Yes.

Q You eat with him and his family?

A No.

Q Didn't you have coffee at times at his house?

A Yes.

Q And it was a friendly type relationship between you and Mr. King at that time; is that the truth?

A Yes.

Q Did you consider yourself friends during that period of time?

A Yes.

Q So even after he slapped you, according to your testimony, with John Longo being present a couple of years ago, you went to his house, had coffee with him and his wife, and children, and you considered him your friend; isn't that true?

A Yes.

Q And now what did you ask him to do for you on November 11, 1972?

A I asked him to get me an extension of time for the payment of the money.

Q Yet you knew that he was not the one that gave you the money at that time; is that true?

A I thought he was not the one.

Q You knew it because you didn't ask him to give you an extension of time, didn't you?

THE COURT: You are arguing, Mr. Brindisi.

MR. BRINDISI: I am sorry. I apologize Your Honor.

BY MR. BRINDISI:

Q Did you ask Mr. King to give you an extension of time on the money that he loaned you?

A He okayed an extension of time to October 30th in the car.

Q I am talking about November 11th?

A Yes.

Q On November 11th, I think you testified that you thought he did not give you the money?

A But he authorized an extension of time in the car on October 30th.

Q On October 30th?

A Yes.

Q But there is no recorded conversation of that discussion in the car on October 30th, 1972; is there?

A No.

Q And at no time did the F.B.I. give you any equipment, from September 13th to October 30, 1972, so that you could record any of these conversations with any of these defendants; is that true?

A With any of these defendants? No.

Q And now in fact, sir, isn't it true that when you saw Mr. King on November 11, 1972, your discussion was about another business transaction that you and Mr. King were involved in?

A Partially.

Q Partially?

A Yes.

Q And that you and he were supposed to accomplish certain things and go to certain places; is that true?

A Yes.

Q And as a sideline in that conversation regarding a business transaction that you and he had, the subject of the $4,000.00 came up; isn't that correct?

A $5,000.00.

Q $5,000.00?

A Yes, at that point it was $5,000.00.

Q Did you tell him at that time it was $5,000.00?

A It was $4,000.00 plus the $1,000.00 interest that was past due.

Q Did you mention that on November 11, 1972?

A I think I mentioned both the $4,000.00 and the $1,000.00

of interest, both.

Q At any time when you say you were placed in a position where violence was caused to you, either by a gun to your head or a knife to your throat, or slapped around, did Lou King do that to you?

A What he did was set up every one of these meetings.

Q At whose request, yours?

A Yes, I made the requests thereafter.

Q You asked him to set up a meeting with people so that you could discuss with them the $4,000.00 transaction; is that correct?

A Yes.

Q Sure. You borrowed $4,000.00 and you said that Lou King came over to talk to people so he could arrange the meeting for you; isn't that what happened?

A Yes.

Q Because you wanted to explain to them the reason why you could not pay back the money at that particular time?

A Yes.

Q So when you say he set up the meetings, he did that at whose request?

A Sometimes it was not at my request. Sometimes he told me I had to be at the meeting.

Q When did he tell you that?

A The date when the loan was due and we had meetings set up for the payment to be made.

Q What date Mr. Sackman?

A November 13th the interest was due, and I gave Mr. King the $350.00.

Q Let's get back to November 13th, 1972 for a few minutes. You had been given electronic eavesdropping devices?

A Yes.

Q Now you had a meeting on November 13, 1972 at the Whitsboro Collision Service?

A Yes.

Q At which time you claim you gave Mr. King $350.00, was he supposed to give this back to the people who loaned you the money?

A Yes.

Q So you knew that that payment given to him was to go to the people who loaned you the money and not to him; is that true?

A At that time, that is correct.

Q What other conversation did you have with him on November 13, 1972 at the Whitsboro Collision Center?

A He discussed the $350.00 was not enough money. It was just good faith.

Q Good faith?

A And he told me I had to have the rest of the money and he would talk to them to see if the $350.00 would be satisfactory towards the $1,000.00 interest that was past due.

Q Did you tell the F.B.I., that you had a meeting with Lou King on November 13, 1972?

A Yes I did.

Q Did you tell them that before you had that meeting on November 13, 1972?

A Yes.

Q Did you tell them that you had also met James Talerico?

A Yes.

Q Yet you went down to the Whitsboro Collision Service on November 13, 1972 and you didn't have the electronic bugging device on you?

A I was afraid to wear it.

Q Were you afraid to wear it on November 11, 1972; yes or no?

A I was apprehensive.

Q But you wore it?

A Yes.

Q Even though you were apprehensive you did wear it?

A Yes.

Q In fact you wore it on three different occasions on November 11, 1972?

A I had it on all the time.

Q What I meant was three different conversations?

A Yes.

Q On November 11 you said you talked first to Jim Talerico on the telephone?

A Yes.

Q And that was recorded?

A Yes.

Q Then you came down to Utica and met him at Geraci's Restaurant, and that was recorded?

A Yes.

Q And when you had a conversation between yourself and Mr. King at his residence, recorded; is that true?

A Yes.

Q So three conversations were recorded on November 11, 1972?

A Yes.

Q Is that so?

A Yes.

Q How long did the F.B.I., spend with you to tell you how to wear this equipment and how to use it?

A About two and a half, three days, with maybe an hour or two on different occasions. I would say it was a total of three, approximately two to three hours one day, at one of the agent's homes, who tested the equipment.

Q Was that at Ryan's house, in Utica?

A No it was not.

Q Where was it?

A In Syracuse, New York.

Q So they spent three days with you showing you how to use this equipment for the purpose of recording conversations with these defendants concerning transactions of September 18, 1972?

A No. They told me about the equipment and we discussed the equipment. They didn't show me how to use the equipment for three days.

Q Just answer the question. If you think I am trying to mislead you tell me and I will try to rephrase the question. I don't want any confusion. O.K?

A O. K.

Q How many hours did they spend with you showing you how to use this equipment?

A Three hours.

Q Would they set it up on your person?

A Yes.

Q Would you talk into the microphone to see whether or not it was in working condition?

A Yes.

Q And they showed you how to wear it on your body?

A Yes.

Q And that was for the purpose of recording conversations with these defendants regarding the transaction of

September 18, 1972?

A Yes.

Q So they instructed you how to use this equipment, and on the basis of those instructions you did wear it and record the conversations on November 11, 1972?

A Yes.

Q And although you were apprehensive about wearing it, you did wear it?

A Yes.

Q And you went back after making these recordings on November 11th, 1972, did you listen to the recordings?

A No.

Q Who did you give them to?

A Mr. Kolavar.

Q Mr. Kolavar. When you wore this equipment was there an F.B.I., car within a near distance so that it could be recorded?

A I don't know.

Q You don't know?

A I would say there was a surveillance vehicle in the area, but I don't know whether it was a car.

Q Or more than one car?

A I don't know.

Q So there could have been more than one car in the area when you were wearing this equipment; is that correct, sir?

A Correct.

Q I am just trying to figure out how it works. You have a microphone recorder on you and they have a device in their vehicle which records the conversation?

A I don't know anything about the motor vehicles. I am only familiar with the equipment that was on my body.

Q The equipment on your body, is this for the purpose of transmitting?

A No.

Q It records also?

A Yes.

Q Does it have a tape on it?

A One unit does.

Q Talking about the unit used on November 11, 1972, did that have a recording unit?

A I had both units at all times.

Q So you can record and transmit at both times?

A Correct.

Q Going back to November 11, when you gave the record that was made, at that time did you keep the equipment?

A I gave them all equipment.

Q Before you gave them the equipment back, you tell them that you had a meeting on November 13th?

A I don't believe so. I gave them the equipment back because I was going back to Geraci's, because I wanted to be sure that they didn't forget the equipment was on me.

Q That was on November 11?

A Yes.

Q You did have conversations with Mr. Talerico which were recorded, and after that you did meet with the F.B.I?

A No I did not.

Q Was it the following day?

A Most probably. I am not sure. We had numerous meetings. You have to check the records on that.

Q Part of the records given to me by the Government indicate that you had an interview with Mr. Kolavar on November 11, 1972. Would that be true?

A Yes.

Q Was that the same date that you recorded the conversations, two being with the defendant Talerico and one with the defendant King?

A Correct.

Q So you at that time told him that you had a meeting with the defendant King on November 13, 1972?

A I don't recall.

Q Do you recall having an interview with Mr. Kolavar of the F.B.I., on November 11, 1972?

A Yes.

Q Do you recall telling Mr. Kolavar at that time, after conversing with Talerico for a short period of time, Talerico told Mr. Sackman to go to Louis King's home. He said he followed Talerico's instructions and drove to King's home arriving there at 1:45 P.M. After entering the home he explained to Louis King that he was having difficulty getting together the $1,000.00 that he was scheduled to pay on Monday, November 13, 1972. And Mr. Sackman said that King told him that he was in serious trouble. King also said, according to Mr. Sackman, that he should repay the $4,000.00 immediately and get the guys off his back. King also instructed Mr. Sackman to meet him at the Whitsboro Auto Shop on Monday, November 13 at 11:00 A.M., 1972.

You tell that to Mr. Kolavar at that time?

A I believe so.

Q So he was aware of the meeting that was going to take place on November 13, 1972; is that true?

A Yes.

Q And knowing that you had this meeting, it is your testimony that you did not bring any electronic eavesdropping devices to record anything that took place on that day at the Whitsboro Auto Service?

A I did not bring it.

Q And Mr. Kolavar or no one connected with the F.B.I., did they offer you and ask you to wear the electronic eavesdropping device so you could record the conversation?

A They offered the equipment to me and I refused to wear it.

Q So they offered you the equipment and you refused to wear it?

A I was afraid.

Q Because you were afraid. O.K. So the next time that you had any conversations with the defendants was on November 16, 1972; is that correct?

A Yes sir.

Q That is three days later, after November 13, 1972?

A Yes sir.

Q You wore the equipment on that day?

A Yes.

Q You weren't afraid on that day?

A I was still afraid but I wore it.

Q You were. O.K. Now according to the way you use this equipment, it is my understanding that you can turn it off and turn it on anytime you want to; yes or no?

A I can't answer yes or no. There are two pieces of equipment. One is on all the time and one I turn off or on, at my control.

Q Which one is that?

A The inside unit, under my arm.

Q That is the recorder?

A That is the recorder, yes.

Q So it was possible for you to engage in conversation and not have it recorded; is that true? If you wanted to turn it off yourself?

A I could not turn it off without him noticing I was turning it off. Once I activated it, I left it on, while I was in the presence of Mr. King and Mr. Talerico.

Q Where was this equipment?

A (indicating) It was right here on my body, between my tee shirt and the outer shirt, strapped around my body.

Q You said you could manipulate this?

A I had the off and on switch in my pocket.

Q Then did you have to reach underneath your pocket to turn this thing off? That is on the other side?

A No.

Q You had it in your pocket?

A Yes.

Q With a switch that went on and off?

A Yes.

Q Just by touching that switch you could record the conversation or not record the conversation at your will; isn't that correct?

A Yes.

Q Now there was no arrests made of any defendants after you were assaulted with a gun and knife after October 30, 1972, and you had further discussions with the F.B.I., when you got set up on November 11th, with the electronic equipment; isn't that true?

A Yes.

Q And you skipped it on November 13th, but you did take it on November 16th; is that right?

A Yes.

Q And that conversation on November 16, 1972 where did that take place?

A November 16th? At the Whitsboro Auto Body Shop.

Q I notice in your grand jury testimony you say this was Jay's Auto Sales?

A I never said that.

Q You never said that?

A I don t believe so.

Q Do you remember testifying before the Federal Grand Jury in this matter? I can't give you the date. Mr. Welch will give you the date. I will ask you the question.

MR. WELCH: The Grand Jury was held December 7, 1972 Your Honor.

BY MR. BRINDISI:

Q Do you remember testifying before the Federal Grand Jury on December 7, 1972, and you were under oath at that time?

A Yes.

Q Do you remember being asked this question and giving this answer:

> "Q Whose body shop? You say it is the Whitsboro Body Shop because it is located in Whitsboro or is that its name.
>
> A That is the way it is listed in the telephone book. It is Jay's in the telephone book."

You gave that answer to that question at that time?

A I thought I said at that time---

Q Did you give that answer to that question at that time under oath on December 7, 1972, yes or no?

A No.

Q You did not give that answer?

A I thought I said J. F. Auto Sales.

Q So you are saying that the transcript is wrong?

A Yes.

Q Isn't it true, Mr. Sackman, that the reason you used the word "J. F.", is because the F.B.I. has indicated to you a person by the name of Joseph Falcone seems to be the reputed leader of the under world in this area?

A No.

Q You know this from past experience; is that correct?

A Yes.

Q Have you ever met Mr. Falcone?

A I casually met him at Sam Aiello's place.

Q When was that?

A Two and a half, three years ago.

Q Did you have any conversation with him?

A No.

Q Did he discuss organized crime with you?

A No. Mr. Aiello did, though.

Q He is dead; right?

A Yes.

Q O.K. Was it part of your function as an informer for the F.B.I., to filtrate into so-called organized crime?

A Yes.

Q And did you ever discuss Joseph Falcone with the F.B.I?

A Only in connection with whether it was mentioned here.

Q And where was it mentioned here?

A With Mr. Talerico, when I asked if I could talk to the old man about the loan and he said, "I don't know", and when it was referred to in the meeting that we had before.

Q Are saying that it is your impression that Mr. Falcone loaned you the $4,000.00?

A I don't know if it was him personally.

Q But you wanted to ask Mr. Falcone about the $4,000.00; is that your testimony?

A I wanted to talk to Mr. Falcone to get extra time on this loan that was owed to his family.

Q With a recording device you wanted to have this conversation with him?

A No necessarily with a recording device.

Q Were you going to use a recording device to talk with Mr. Falcone?

A I probably would have, yes.

Q Do you know how old Mr. Falcone is?

A He is an elderly man.

Q An old man?

A An elderly man, yes.

MR. WELCH: Objection to this line of questioning.

THE COURT: I think it may go to his state of mind.

BY MR. BRINDISI:

Q Do you know that he is over 73 years old?

A I thought he was approximately seventy.

Q Do you know he is on Social Security?

A No I did not know that.

Q But you understood that he loaned you the $4,000.00, or was this something that you wanted to prove to the F.B.I. because you had volunteered your help to them?

A No, that was not the case at all.

Q That was not the case at all?

A No, no. I expected to pay this loan off, and the F.B.I., wouldn't got involved, as far as the loan was concerned.

Q But they got involved, at least insofar as this case is concerned, that on November 11th, or three days prior thereto, when they gave you eavesdropping electronic equipment to use to record the conversations with the defendants; isn't that true?

A Yes.

Q Now after that--- strike that. So you are saying that you did not want the F.B.I. assistance prior to three days before November 11, 1972; is that your testimony?

A In relation to the shylock loan, yes.

Q And this is after a gun had been put to your head and a knife put to your throat, you waited eleven days before you asked them for any assistance?

A No.

Q Or eight days?

A No, I wanted their assistance right along the line, but I thought I was going to have the money to pay them back. I was interested in the other business dealings which I evidentally can't mention here.

Q Knowing that your life had been threatened, a gun had been put to your head---

THE COURT: Never mind summing up. Put your question.

Q (continuing) --- you did not request---

MR. BRINDISI: I can't Your Honor unless I ask the question my way.

THE COURT: Don't sum up in your question. Just put the question.

BY MR. BRINDISI:

Q After your life had been threatened by the use of a knife and gun, your testimony is that you did not seek their assistance until---

A (interrupting) I did seek their assistance.

Q Wait until I finish the question. Until three days after November 11, 1972, because you thought you could get the money to pay off this obligation; is that your thought?

A Not the way you put the question.

Q You tell me.

A I had their assistance all away along the line, as far as this loan was concerned.

Q They were helping you?

A Yes.

Q And they were in the background assisting you throughout the entire transaction, yes or no?

A No with the shylock loan. They were against the shylock loan.

Q I am talking about after you got involved in this thing, you indicated that you did have their assistance, and they were working along with you throughout the time from September 18, 1972 to December 1st, 1972; is that your testimony?

A Yes.

THE COURT: I think, Brindisi, you are getting very repititious, and I don't want to cut you off, but you have had this man on cross-examination for two hours, and you are going back over the same ground.

MR. BRINDISI: I don't think I am Your Honor.

THE COURT: Keep going. I will cut you off without hesitation. I will give you ten more minutes.

MR. BRINDISI: Are you allowing me cross-examination of ten more minutes?

THE COURT: Just keep going. Don t keep repeating yourself.

BY MR. BRINDISI:

Q Once you had the assistance of the F.B.I., were they surveilling the car that you were driving at times when you were meeting with the defendants?

A On many occasions.

Q On most of the occasions?

A On many of the occasions.

Q Many is a big word. Approximately how many?

A I don't know.

THE COURT: We have been all over this at least twice. Turn to another subject.

MR. BRINDISI: Your Honor, I don't know. I am not being able to conduct an effective cross-examination.

THE COURT: The record is clear. My directions are turn to another subject. It is repititious, Mr. Brindisi.

BY MR. BRINDISI:

Q All right. When you were in the car at that time you said you were threatened, how far from you were the F.B.I?

A Which time was I threatened?

Q We are talking about October 30th.

A October 30th, there were no F.B.I. cars in the area, to my knowledge.

Q I think you testified that you told the F.B.I., you were going to have that meeting on October 30, 1972?

A Yes.

Q Were the F.B.I. in the area on the occasions that you recorded all these conversations?

A They were in the area on other occasions besides that time, yes.

Q So you knew that help wasn't too far away throughout all these proceedings; is that true?

A Only in certain instances.

Q Did you know that help wasn't too far away when you had the conversation with Carl Mazza on November 18, 1972?

A Yes I did.

Q They were in the area?

A Yes.

Q How far away from you, if you know?

A I don't know.

Q You don't know. All right. Now in the conversations that you had with Lou King on November 16, 1972, I believe you indicated this took place at his residence?

A November 16th was at the Whitsboro Auto Body Shop.

Q I am sorry. Which one was it at his home?

A November 11th. On the 16th it was at the Whitsboro Auto Body Shop.

Q How many times had you discussed this case with the United States Attorney's Office since say sometime after December 1st, 1972?

A Three times, perhaps four at the most.

Q Three or four times?

A Yes.

Q And in those conversations that you had with the United States Attorney's Office you go over generally the matters that you testified to today in court?

A Some of them.

Q Some of them?

A Yes.

Q And I am sure you are trying to be fair and impartial to both sides; is that correct?

A Yes.

Q And you cooperated with the United States Attorney's Office by telling them your side of the story, is that correct?

A Yes.

Q Were you requested by the United States Attorney's Office to allow the defendants' attorneys to talk to you?

A Yes.

Q And you refused to talk to us?

A Absolutely. I was in dire fear of my life.

Q From the attorneys?

A From the attorneys and the people involved.

MR. SCHOLL: Your Honor, I object to this.

THE COURT: Overruled.

BY MR. BRINDISI:

Q Did Mr. Welch tell you that your meeting was to be with the lawyers alone?

A He did tell me that, yes.

Q He did?

A Yes. I didn't want to be in the area.

Q Did he tell you that which could be at any place convenient to you, the United States Government and the F.B.I?

A Yes.

Q And you still refused to discuss this case with the defendants' attorneys?

A Yes.

Q And you want to be fair and impartial to both sides?

A Yes.

Q And now in the conversation which you had with Mr. King on November 16, 1972, at any time was there an indication made to you that he loaned that amount, the $4,000.00?

A November 16th? No.

Q Your answer is no?

A No.

Q In the conversation of November 16, 1972, did you request him to assist you in getting an extension of the time to pay the indebtedness?

A Yes.

Q Did you tell him to go and talk to these people on your behalf?

A Yes.

Q And as a result of your request, did he set up a meeting for you to talk to these people?

A Yes.

Q And did that take place on November 18, 1972?

A Yes.

Q So at your request to have a meeting you had Mr. King go and make arrangements for you to see some people on November 18, 1972; is that correct?

A He said I best talk to the people or I would be in trouble because the note was due on the 18th.

Q Your testimony is that he told you you should talk to the people or did you tell him that you wanted to talk to the people?

A Part of the conversation was one way and part of the conversation was the other way.

Q Isn't it a fact, Mr. Sackman, that he told you in the beginning not to borrow any money?

A Yes he did.

Q That is true?

A Yes.

Q Isn't it true also that he told you that he had no part of that money that was loaned to you?

A That he had no what?

Q That that money was not his loan, was not his money?

A Yes, he told me that.

Q Didn't he tell you if there was any violence against you it wouldn't come from him?

A Yes.

Q Subsequently when you started talking about people coming to your house, didn't he tell you one thing you will have no worry about that I won't be there?

A Yes.

Q Isn't it a fact that every time you had a problem, he interceded on your behalf?

A Yes.

Q In fact when you were, according to your testimony, assaulted in some way, he broke it up?

A Yes.

Q And he told whoever was in the car to lay off, there was no need for anything like that; isn't that true?

A Yes.

Q As a matter of fact he was helping you all the way through?

A I thought so.

Q You thought so. And he himself did nothing to hurt you in any of these conversations you had with him?

A No, he threatened me a couple of times, he was going to be in the middle and he didn't want to be in that position.

Q Was it your understanding when he told you that, that he would have to pay off the money that was loaned to you?

A Yes, or he would be obligated to pay it off.

Q Did he indicate even if he had to pay it off he would cause violence to you?

A No, he never indicated that. He never indicated he was going to do it at all.

Q You said he told you if you did not pay it he would pay it?

A No, he said he was responsible for it.

Q He would have to pay it?

A He said he was responsible for it.

Q Isn't it true, sir, that you kept asking him to get you an extension of time to repay these amounts, and didn't he tell you, "I have nothing to do with it. I am in the middle, because you are placing me in the middle."

A On some occasions he said that, yes.

Q As a matter of fact he told you not to get him involved?

A Yes.

Q As a matter of fast even on December 1st, 1972, in the conversation you had with him he said, "I am not involved with this thing. Don't get me involved." Isn't that what he told you?

A Yes, he said, "I am just a middle man." He didn't say he was not involved.

Q Weren't his words exactly, "Don't put me in the middle?"

A Yes. On other occasions he said he was just the middle man.

Q On what other occasions did he say that Mr. Sackman?

A On November 18th.

Q On November 18th. When else?

A Several times earlier in the month. I can t pinpoint the exact times.

MR. BRINDISI: Your Honor, if the court please, we were handed during the lunch break a transcript of conversations which took place between this witness---

THE COURT: I am aware of what you were handed. What is your problem?

MR. BRINDISI: My problem is that they consist of what I would say over 100 pages, together with the grand jury testimony and the material that was given to us under 3500, by the Jenks Act, and I would like a five minute recess to go through those papers.

THE COURT: You had them during the noon-hour, didn't you?

MR. BRINDISI: We had them during our break, and we were going through the other papers.

THE COURT: I don't mind giving it to you, but I want the record to reflect that you already have had them for an hour. Not just giving you five minutes.

All right, we will take a short recess.

MR. BRINDISI: Thank you.

(Whereupon at this point, at 3:40 P.M., o'clock an adjournment was taken to 3:50 P.M., o'clock on the same day).

(The following took place in open court with the jury present).

THE COURT: Where is your witness? We wait ten minutes every time for him, every time we take a recess. Go get him.

J. SCHUYLER SACKMAN

resuming the stand, testified further as follows:

CROSS-EXAMINATION (continuing)

BY MR. BRINDISI:

Q Now Mr. Sackman after you had the conversation on November 18, 1972, and after you had been assaulted, according to your testimony by one of the defendants that you pointed out, do you recall having a conversation with Mr. King in which he told you he had nothing to do with this thing at all?

A He had nothing to do with it?

Q Right.

A He did not say he had nothing to do, he had nothing to do with the enforcement. I don t follow the question.

Q Did he tell you after you had this incident on November 18? You recall this other party being in the car?

A Yes.

Q And you and Mr. King were alone in the car; is that correct?

A When they both left the car on November 18th? Let me get my dates straight.

Q This is the day that you say you saw Carl Mazza?

A Yes.

Q November 18th?

A Yes.

Q You testified that you met Mr. King earlier in the day and you had to go down and see someone in Herkimer?

A Yes.

Q And you came back and were going to have lunch with Mr. King?

A Yes.

Q When did he tell you that you were going to have lunch together?

A In his home.

Q Before you left for Herkimer?

A Yes.

Q Before that he told you you were going to have lunch at Howard Johnsons, he mention any violence to you?

A I don t know.

Q After you met Mazza you said you met in the car?

A Yes.

Q And some violence was caused to you at that time?

A Yes.

Q And Mr. King, where was he seated?

A In the back seat.

Q What did he do when violence was being caused to you?

A He pulled the gun and called Mazza off.

Q How did he pull him off? Take him by the body and pull him away from you?

A Physically pulled him off.

THE COURT: Whose car was it?

THE WITNESS: Well---

THE COURT: Whose car. Automobile?

THE WITNESS: Oh my automobile. I am sorry.

BY MR. BRINDISI:

Q So Mr. King was in the back seat of your car?

THE COURT: Had you called Mazza to come over there?

THE WITNESS: No, Mr. King had.

BY MR. BRINDISI:

Q This was pursuant to your instructions to have an opportunity to talk to a representative of the people who loaned you the money?

A Yes.

Q So you told Mr. King to make a telephone call for you?

A No. Mr. King said there was a man sent up to see me.

Q Isn't this something that you had previously arranged? You wanted him to get ahold of one of the representatives, that you wanted to talk to them about that you couldn't pay it?

MR. WELCH: Objection. The transcript will reveal that November 18th was the day that Mr. Sackman was to make a payment.

THE COURT: That will be the jury's recollection. Go ahead.

MR. BRINDISI: Will you repeat the question.

(The Court Reporter repeated the question as above recorded).

THE WITNESS: Yes.

MR. LONGERETTA: I object to the form of the question.

THE COURT: Sustained.

BY MR. BRINDISI:

Q Before November 18, 1972, did you request Mr. King to contact certain people so that you could talk to them regarding the loan of September 18, 1972?

Yes.

Q And this meeting that you had on November 18, 1972, was this with a person who Mr. King had contacted on your behalf?

A I assume so.

Q So in the morning---

MR. LONGERETTA: Objection. He is drawing a conclusion.

THE COURT: Sustained.

BY MR. BRINDISI:

Q In any event the meeting was arranged because of your request; isn't that true?

A No. The loan was due at that time.

Q What I am saying though is you wanted to have a discussion because you could not come up with the money?

A Yes.

Q And you wanted to meet with some people?

A Yes. But on a prior occasion Mr. King told me they wouldn't accept the partial payment I made.

Q Even after that--- in fact you gave him $350.00 to give this to some other people?

A Yes. He said he kept it under a dish in his dining room.

Q Isn't it a fact that he also told you that they wouldn't accept the $350.00. They wanted the entire amount?

A Yes.

Q So you knew he was not going to get the $350.00, he was going to hand it to somebody else?

A That is what he said.

Q And that is what you thought at that time?

A Yes.

Q So that the money was due on the 18th and you didn't have enough to pay, and you asked him to make a meeting with people so you could discuss the repayment; isn't that true?

A Yes.

Q After you had the discussion in the car, at which time you indicated that Mr. Massa left the car?

A Yes.

Q Did Mr. King tell you at that time, "I told you I had nothing to do with it." Did he tell you that at that time?

A I believe he said something like that.

Q While he was in your car and you were being allegedly attacked, did he forcibly grab the person in the other seat and take him off of you?

A Right.

Q And told him not to do anything like that; is that right?

A Yes.

THE COURT: This is about the fifth time on that Mr. Brindisi. Please progress.

BY MR. BRINDISI:

Q The next time that you met with Mr. King or any of the defendants was when, after November 16, 1972?

A November 18th.

Q And where did that meeting take place?

A First at Mr. King's house and then at the Howard Johnson Restaurant.

Q And you also said at that time that Mr. King had nothing to do with this transaction?

A I answered that question before.

Q I am talking about the 18th?

A That is what I thought you were talking about.

Q When was the next time after the 18th?

A That is a new question. You said when was the time after the 16th.

Q I will rephrase my question. When was the next time that you met with Mr. King and the defendants after November 18, 1972?

A I am not sure.

Q Would it be November 30, 1972 or would it be between November 18th and November 30th?

A I am not sure any more. I don t recall the exact date.

Q After November 18th when you were allegedly assaulted by Mr. Mazza, did you ever come back to Utica to discuss any business dealings with the defendant King?

A I believe so.

Q On how many occasions?

A I don t know.

Q Approximately?

A I would say a few, yes.

Q And on each of those occasions did you notify the Federal Bureau of Investigation?

A Yes.

Q And on those occasions when you talked with Mr. King between November 18, 1972 and November 30, 1972, you have any of the eavesdropping devices on you, personally?

A No.

Q So for twelve days you had conversations with the defendant King which were not recorded; is that correct?

A Yes.

Q You have any conversation with any of the other defendants besides Mr. King during that period of time?

A I don't remember.

Q After you were, as you say, assaulted on November 18, 1972, that incident was recorded, wasn t it?

A Yes.

Q Did the F.B.I. make any arrests of the defendants after that incident?

A No.

Q Now did you report to the F.B.I., the assault of November

18, 1972?

A They watched.

Q They watched? They were right there?

A I told you that before, sir.

Q Did they come over to help you?

A I don't know.

Q You don't know?

A No.

Q You mean the F.B.I., was there watching you having a knife put to your throat and they did nothing about it; is that your testimony?

A I said I don't know what they were doing at that time. That is not my testimony.

Q During the period of time that you were in the car having a knife put to your throat, with the F.B.I. standing by, did they at any time after the assault come over to the car and talk to you or any of its occupants?

A No.

Q After you were allegedly assaulted with a knife put to your throat, where did you go on November 18, 1972?

A I drove to the Nichol's Shopping Center.

Q How far is that from Howard Johnson's?

A Ten or fifteen minute drive. Maybe ten minutes.

Q Did you later find out where the F.B.I., was---

A (interrupting) No.

Q (continuing) ---when you were in the car on November 13 1972?

A No.

Q You don't know where they were?

A No.

Q On October 30, 1972 you said you were in the parking lot of Howard Johnson's; is that correct?

A Yes.

Q And you were in a car owned by Mr. King?

A Yes.

Q And you said that was an Oldsmobile?

A Yes.

Q Are you sure about that?

A Yes.

Q Are you positive he owns the automobile?

A I don't know if he owns it. I said it was a car he had been using.

Q Had you seen it at his house?

A Well the three vehicles that he drove---

Q I am not talking about vehicles.

A Yes, I had seen it at the house.

Q After you were assaulted with a knife and gun, did you have coffee at Mr. King's house?

A Yes I did, on October 30th.

Q And after you were assaulted on November 18, 1972, did you go back to Mr. King's house and have coffee again?

A I don't know.

Q You don't recall?

A No.

Q You still considered him a friend after these assaults?

A Yes I did.

Q So for twelve days before November 18 and November 30th, you had conversations with him which were not recorded, but on November 30th, you had placed upon you again the electronic eavesdropping device?

A Would you say that again?

Q On November 30th you once again had an electronic eavesdropping device?

A On November 30th?

Q Yes, on November 30th?

A I did not have any eavesdropping device on me on November 30th.

Q I am sorry. I think you probably made a telephone call?

A Yes.

Q And that was from your residence in Syracuse?

A Yes.

Q And I believe you testified F.B.I. Agent Kolavar --- is this a conversation where he recorded?

A No.

Q You did this yourself?

A Yes.

Q And was this with your own equipment or with the equipment given to you by the Government?

A The grey electronic notebook.

Q Your equipment?

A My equipment, yes.

Q And at that time I believe you indicated that you called Mr Talerico; is that right?

A Yes.

Q And I believe you testified that you wanted him to get a message to Mr. King that you were going to be in town the following day?

A Yes.

Q My recollection is it was a bad night out and he could not deliver that message?

A Yes.

Q And then on December 1, 1972 do you know now that that was the day that the defendant King was arrested?

A Yes.

Q So on December 1, 1972 you placed a call to Mr. King at the Whitsboro Collision Service; is that correct, sir?

A Yes.

Q And that call was monitored or taped by F.B.I. Agent Kolavar?

A Yes.

Q And in that conversation you indicated that you informed Mr. King that you were going to New York City and you have a $1,000.00 that you wanted to give to the people that loaned you the money; is that right?

A Yes.

Q And did he tell you at that time that he was not going to come down and pick up the money?

A In the first part of the conversation, yes.

Q And you told him something about a business transaction that was going to be taking place in New York City?

A No. He told me he wanted me to do something for him in New York City and I could kill two birds with the one stone.

Q He told you he was not going to be there to pick up the $1,000.00 and then when you told him you were going to New York he told you he would like to see you and have you do something for him in New York City, is that true?

A Yes.

Q And you never kept that meeting?

A No sir.

Q In the meeting of October 30, 1972 you indicated that Mr. Zogby had a knife; is that true?

A Yes.

Q And now was Mr. King in the car at that time?

A Yes.

Q Did he come to your defense at that time also?

A No.

Q He didn't?

A What do you mean by "come to my defense?" Did he pull a knife or anything like that? No.

Q He tell you at that time he had nothing to do with this?

A Yes. He said he was the middle man again.

Q From the time you borrowed the money until December 1st, 1972 you were asking Mr. King for his help?

A I said yes.

Q Right. And he gave it to you?

A Yes.

Q Can you tell us approximately how many conversations you had with Mr. King about anything which was not recorded between September 18, 1972 and December 1st, 1972?

A I have no idea.

Q Would you say there were fifty or more?

A I have no idea.

Q It was almost every other day?

A There were numerous conversations.

Q That were not recorded; right?

A That were not recorded, yes.

MR. BRINDISI: Thank you very much. I

have no further questions at this time.

MR. MANGANELLI: With the court's permission.

CROSS-EXAMINATION (continuing)

BY MR. MANGANELLI:

Q Mr. Sackman is it fair to say that you were friendly with James Talerico for upwards of four years prior to September 18, 1972? Is that a fair statement?

A Yes.

Q And during that period of time you had occasion to meet with and speak with him on many matters; is that correct?

A Yes.

Q And is it also fair to state that you had been in Utica for the purpose of seeing him on many, many times; is that correct?

A Yes.

Q And conversely, was he ever up in Syracuse during the period of your acquaintance to visit you?

A Yes.

Q And did you and he develop a friendship over this four year period of time?

A Yes we did.

Q And is it fair to say that you considered Mr. Talerico your friend?

A Yes I did.

Q As a matter of fact, do you know whether or not Mr. Talerico is married?

A Yes I do.

Q Do you know what his wife's first name is?

A I can't think at the moment. My mind has gone blank.

Q Would Diana refresh your recollection?

A Yes, Diana.

Q Have you been in their company on many occasions?

A Yes I have.

Q Likewise were you familiar with or did you have information concerning the financial condition Mr. Talerico was in during the fourt years of your acquaintance?

MR. WELCH: Objection to that.

THE COURT: May I have the question please?

(The Court Reporter repeated the question as above recorded).

THE COURT: Overruled.

A I would say some of the time I knew.

Q Specifically in reference to the time closest to the 18th of September, you have an opinion as to the financial condition of Mr. Talerico at that time?

A He told me he was in poor financial condition.

Q Did you believe him when he told you?

A Yes.

Q You have any reason to doubt him?

A No.

Q On the 18th of September you referred to an alleged loan?

A Yes.

Q Was Mr. Talerico present on that occasion?

A No.

Q Did you inform Mr. Talerico that you were going to the Ramada Inn for the purpose of making a loan at that time?

A Yes.

Q When was it that you first told him?

A I think he and Mr. King discussed a good place for me to get the money, and they decided on the Ramada Inn.

Q Is it your testimony that Mr. Talerico discussed it with you and Mr. King?

A Yes, Mr. King and Mr. Talerico discussed the good place where I could receive the money, and they chose the Ramada Inn.

Q Did Mr. Talerico at that time know that Mr. Marrone was to be there?

A Did he know?

Q That Mr. Marrone was to be there?

A I believe he did, yes.

Q Do you know it as a fact?

A Yes, I think he knew that Mr. Marrone was going to be there.

Q Was the name Al Marrone ever mentioned in the presence of Mr. Talerico with respect to this loan to be made on September 18th?

A I would say yes.

Q Will you tell me your best recollection as to the time and place Mr. Talerico was informed that Mr. Marrone was to be at the Ramade Inn on September 18, 1972?

A There was a discussion as to the location where Mr. King would not feel uncomfortable and Mr. Marrone would not feel uncomfortable, and Mr. Talerico mentioned the Ramada Inn would be a good spot, and he mentioned it was near a hospital.

Q Was it the understanding that Mr. Talerico was to be present at that meeting?

A No.

Q Was it the understanding that he was not to be present at that meeting?

A No.

Q Did you request that he be present?

A No.

Q Mr. Sackman, when the money was turned over to you, as you testified, was there any doubt in your mind as to whether any of this money came from James Talerico?

A There was no doubt that no part of that money was his.

Q Following the 18th of September--- strike that. Sir when you met on the 18th, did you discuss the terms of the loan on the 18th with the gentlemen, Mr. King and Mr. Marrone?

A Yes we did.

Q Do you know whether or not Mr. Talerico was apprised of the terms of this loan?

A I have no knowledge.

Q Did there come a time when you advised Mr. Talerico what the nature of the terms of this loan were?

A Yes there was.

Q When was it that you informed Mr. Talerico about the nature and the terms of this loan?

A I would say probably between the 18th and the 25th. Approximately a week or ten days.

Q Around a week?

A November 6th, 1972.

Q Refreshing your recollection that a sum of five days before the first electronic recording of your telephone conversation?

A No. I believe he knew about it before then.

Q You are certain it was not the 6th of November?

A I believe he knew it before that, but I am not sure.

Q Is it your best recollection that it was not the week the 6th of November, which would be on Monday before the 11th?

A Yes.

Q So it was some time before then; is that correct?

A Yes.

Q The exact date of which you can't recall?

A No.

Q You had not made notes about it?

A No.

Q But there is not dispute it was sometime after the 18th of September; is that correct?

A Yes.

Q Now do you know where it was or where you were when you told Mr. Talerico about this?

A I think we were driving to Schenectady in the car.

Q And who was in the car?

A Just Mr. Talerico and myself.

Q Did you at this time offer this information or did you tell him pursuant to a question put to you?

A I believe I may have offered the information.

Q Isn t it a fact that he asked you if there was something bothering you "Ski"? Aren't those the words that were put to you on that day, in substance?

A Yes, he knew something was bothering me. It may have come out that way, but I am not sure.

Q In response to that, didn't you tell him what it was that was bothering you?

A Yes.

Q And the subject matter that was bothering you was this loan?

A Correct.

Q Wasn't it at that time that you asked Mr. Talerico if he was acquainted or knew what type of person Mr. Marrone was?

A I asked him that information about Mr. Marrone.

Q And in response to your request, did he give you his opinion?

A Yes he did.

Q Would you say that this trip was before the 30th, which was the date that you were threatened as to the $1,000.00 or was it after the 30th?

A I don't recall.

Q Isn't it a fact that it was after the 30th? Isn't it a fact that-- Mr. Sackman, isn't it a fact that the conversation and the trip that you just testified to occurred after the 30th of October?

A I don't believe so.

Q Wasn't there also some discussion at the same time concerning the description of certain man who threatened you?

A That description I think took place later on. Not on this trip.

Q So your best recollection is that on this trip when you told Mr. Talerico about this loan that was bothering you, that was the only discussion concerning the loan?

A No, I believe we had a discussion about Al Marrone.

Q About Al Marrone?

A Right.

Q And there was at that time no discussion about any persons who physically threatened you?

A I don't believe so.

Q So that you went to Schenectady and you returned; is that right?

A Yes.

Q And after this discussion and while you were traveling with Mr. Talerico on that date, did he personally make any expressed threats to your well being or person?

A Absolutely not.

Q Absolutely not. Were you in any fear of Mr. Talerico, in being in his presence alone in the car?

A Absolutely not.

Q You had no fear of him; is that correct, sir?

A Absolutely not.

Q Now Mr. Sackman, did you continue to see or speak with Mr. Talerico after that?

A Many times.

Q And is it a fair statement, sir, that the major portion of the conversations or the meetings that you had with him referred to matters entirely foreign to this loan? Would you say that is a fair statement?

A Partially.

Q And now the first recorded conversation that you had with Mr. Talerico was on the 11th of November; is that correct?

A Yes sir.

Q And that was a telephone conversation, the first one?

A Yes.

Q Which you recorded as you described?

A Yes.

Q Now that telephone conversation was as the result of a phone call that you placed to him; is that correct?

A Yes.

Q He didn't call you in Syracuse?

A He called me the night before and I was responding to this call.

Q The night before he called your wife?

A Yes.

Q And her name is Laurie?

A No, Lois.

Q And your wife gave you the message that Jim called you?

A Yes.

Q And it was concerning an appointment that you had the following day?

A It was a request from him to come down and meet with him.

Q For you to come down and meet with him?

A For me to come down and meet with him, yes sir.

Q And there was some difference of opinion as to the time of this meeting?

A Right.

Q So you called him on the 11th?

A Yes.

Q And that was a recorded conversation; right?

A Correct.

Q When you called him?

A I called him in the morning.

Q Right.

A Right.

Q And the time was straightened out and I believe it was determined that the meeting would be at 1 o'clock?

A Yes.

Q Isn't it a fact that the purpose of that meeting had nothing to do with this loan?

A Correct.

Q Is that correct, sir?

A Yes.

Q During the course of your conversation with Mr. Talerico about the impending meeting that was going to be on that day, wasn't it [illegible], that indicated to him in substance that "You know I got that obligation to meet on Monday and have not got all the money together"; is that correct?

A Yes.

Q So you-- the interest concerning the obligation on Monday in that conversation came from you; is that correct?

A Yes.

Q In response to that didn't he say, "Oh?", if you can recall?

A I am not sure.

Q But he didn't carry on any conversation on this alleged meeting on Monday?

A No.

Q So the meeting was set and then you hung up; is that correct?

A Yes.

Q And now with reference to the meeting or the obligation that you told him on the phone that you had to meet on Monday, did you tell him about that before the 11th of the month?

A Yes.

Q And did you tell him that?

A It was quite awhile before.

Q Can you tell me approximately when it was and where it was that you told him that you had to meet an obligation on Monday, the 13th of November?

A Oh that was just in the phone conversation.

Q All right. Was that the first time Mr. Talerico was told about any obligation that you had to meet with on Monday, which would be the 13th of November? Is that correct, sir?

A He knew about the loan before that.

Q I am talking about the obligation that you had to meet on the 13th?

A Yes.

Q We are getting into the business of about how he learned of the loan. Did you tell him, in referring to the obligation, that you made reference to, in the conversation on the 11th, which was a Saturday; correct?

A Right.

Q And that was the obligation that you would have to meet on the 13th?

A Right.

Q When was the first time that you mentioned this to him?

A The first time I mentioned that particular loan and meeting that obligation?

Q That's right. Or when you said, "You know, I got the other obligation to meet on Monday"; was this the first time that you mentioned this to Mr. Talerico?

A I mentioned the obligation before that. I just mentioned I had to meet that obligation on Monday.

Q Maybe I am not putting it over. From the time when you had to meet that obligation, which was the 13th of November, did you tell him that the first time, which was on the 11th of November?

A I told him I had given a portion of that amount. We are talking about the same obligation?

Q Right.

A It was one in the same.

Q Right. But did you at any time tell him that you had to pay this obligation on Monday, the 13th of November?

A I don't think so. I told him it was due before that, on occasions.

Q So Monday the 13th, the first knowledge Mr. Talerico had as far as you are concerned was when you told him on the 11th; is that right?

A Yes.

Q And was there any threatening that Mr. Talerico made to you on the 11th of November?

A No sir.

Q Was there anything that he had said that placed you with any fear in regard to your body, welfare and property?

A No sir.

Q At that time, on that occasion, Mr. Sackman, were you in any fear of Mr. Talerico?

A None at all.

Q Now on the same day you then had a conversation with him at a restaurant known as Geraci's; is that correct?

A Yes.

Q I believe you testified that was at approximately 1:05 in the afternoon; is that right?

A Yes.

Q And that conversation was also recorded with the electronic device that you indicated; is that correct?

A With one of the two units I had.

Q Well with one of them. There was a recording of that conversation?

A Yes.

Q Again I ask you, Mr. Sackman, the major portion of that conversation, without going into detail about what the conversation was, isn't it a fair statement that a major portion of that conversation had nothing to do with the events of the loan? Isn t that a fair statement?

A Fair statement, yes.

Q Right. Wasn t it at that time, sir, during your conversation with Mr. Talerico at Geraci's that the subject of the two men came up?

A Yes.

Q And isn't it a fact, Mr. Sackman, that you told Jim Talerico that two men had made threats on your life; isn't that right?

A Yes.

Q And you went on to describe those two men; is that right?

A Yes.

Q And the description that you gave him is substantially the description that you testified to today; is that correct?

A Yes.

Q And this information concerning these two men, was that given to Mr. Talerico in response to any inquiry from him or did you offer this information to him?

A I wanted to know who the gentlemen were.

Q That is not my question.

A I am sorry.

Q My question was, did you offer this information to Mr. Talerico or did he ask you, Mr. Sackman, "I heard two men threatened you? Who were they?"

A No, he did not.

Q So what I am getting at, as far as you are concerned, knowledge concerning any threats made by two men, the description that you had given to Mr. Talerico, it came from you on that day; is that correct?

A Yes.

Q And after you described them, isn't it a fact, Mr. Sackman, that you asked him in substance, "Do you know who they are?"

A Yes.

Q Is it also a fact that his first reply was "punk"?

A Yes sir.

Q Wasn't that his first reply?

A That is exactly what his reply was.

Q Then did you go on and ask him, "Who are they?" And then he replied, "A couple of nuts. A couple of nuts." And then do you remember asking him "They're Al's friends?" And did he say, "Yeah"?

A Yes.

Q And what else did he say after the "Yeah"? Did he say, "Maybe"?

A I don't know.

Q But you wouldn't say that he didn't say "Yeah, maybe"?

A I don't recall.

Q Then Mr. Sackman wasn't it you that made some reference to the old man?

A Yes.

Q And in response to your reference, did he mention subsequently, that is Mr. Talerico said, "I don't know. I don't know. That is all I know."

A Yes.

Q Isn't basically that is what he said?

A Yes.

Q So in reference to your referring to the old man, regardless of who he may be, and we heard some mention here of names, but regardless of who he may be, isn't it a fair statement that is the response he gave you?

A He said, "I don't know".

Q While you were talking with him concerning this transaction, while you were recording, were you in any fear of your well being or person from Mr. Talerico?

A No.

Q Is there any reservation in your mind, Mr. Sackman?

A None whatsoever.

Q At the time you were recording the conversation you considered Jim a friend of yours?

A Yes I did.

Q And he considered you a friend of his?

A I would assume so.

Q Now Mr. Sackman, the rest of that conversation, and I ask you to use your best recollection now, isn't it a fact that the rest of that conversation dealt with nothing concerning the subject matter of the loan?

A That's right.

Q If I understood your testimony following the meeting with Mr. Talerico at Geraci's, you then went to see Mr. King?

A Yes.

Q Did you subsequently come back to see Mr. Talerico?

A Yes I did.

Q And that conversation was not recorded because you didn't have the equipment working at that time?

A Yes.

Q But basically, Mr. Sackman, wasn't the subject of that conversation also referring to the fact, after you came back from seeing Mr. King, was a variation of things?

A Yes.

Q And when you were talking to him and after you left him your mental state was such, as far as Talerico was concerned, was such that you were not in fear of him in any way?

A No.

Q From the 11th until the 13th, keep in mind the 11th was a Saturday--

A Yes.

Q Was the 13th on a Monday?

A Yes.

Q On the 11th to the 13th, did you meet or talk with Jim

Talerico? In other words, after you left him on the 11th until the 13th?

A No, I don't believe so.

Q Then you say the next time you saw him or talked to him was when you went to that body shop in Whitsboro, which was on the 13th?

A Yes.

Q And that was a Monday?

A Yes.

Q When you got there, and I believe you said around 11:30, 12 o'clock?

A Yes sir.

Q Did you go right into the body shop?

A Yes.

Q And in there is an office, I believe you mentioned?

A Yes.

Q Was the door closed?

A To the office?

Q Yes.

A The outside door was closed.

Q I am not familiar with it. Can you describe where the office is located in the garage?

A When you look at the front of the garage there is an entrance at the front. You open the door and the office is right there. There is a couple of chairs in there, a desk, a telephone on the wall, and there is an opening on the left hand side of the stairs.

Q Which way did you go in?

A I believe on that day I came in from the side.

Q When you walked in Jim Talerico was there, wasn't he?

A Yes.

Q Was he talking with Mr. King?

A Yes.

Q Did he tell you at that time his purpose for being there - let me put it this way-- does this refresh your recollection. Did he tell you that he was there that morning because he had to have his Pontiac automobile repaired and they called and told him the parts were in?

A I don't recall that.

Q You don't recall that. You don't have any recollection of it?

A None whatever.

Q If I understand you correctly, Mr. Sackman, when you went into that office you immediately took $350.00 from your person and gave it to Mr. King?

A That is correct.

Q Did you have any conversation or chit-chat regardless of whatever subject it was, before you made this donation?

A I wanted to get the matter over with as quickly as possible.

Q Your first action when you walked in there was to turn around and give $350.00 to Mr. King?

A Yes.

Q You didn t give the money to Mr. Talerico?

A No.

Q You had no intention of giving him anything, did you?

A No.

Q In giving the money to Mr. King, did you make a reference to the fact that this money is to be turned over to anybody else, Mr. Marrone or anybody else?

A I didn't make any reference to Mr. Marrone. I said it was part of the interest. He knew what to do with it.

Q Then the ensuing conversation took place between you and Mr. King first?

A The three of us were conversing together.

Q After you gave the $350.00 to Mr. King, did Mr. Talerico speak to you before Mr. King?

A I don't know.

Q You made some mention that Jim Talerico told you about a $500.00 loan or some amount, and at which time a gun was placed to his head?

A That is what he told me.

Q In substance he said he was forced to pay $500.00?

A That's right.

Q Are you certain, Mr. Sackman, and I implore you to search your recollection, are you certain that that remark concerning the borrowing of $500.00, the borrowing of $500.00, that that remark was made by Mr. King rather than Mr. Talerico?

A It was made by Mr. Talerico.

Q And of that you have no dispute?

A No question or reservation.

Q Now was that principally the subject matter of the conversation or the remarks that Mr. Talerico made on that date?

A No. He was telling me how important it was for me to get the money so I could pay this loan back so that we could do the other business that we had in mind.

Q But basically that was the sum and substance, how important it was for you to pay this money so that you could get onto some other business?

A Yes.

Q And when Mr. Talerico told you that, and by the way that conversation was never recorded?

A That is correct.

Q What you are telling us is that based on your best recollection?

A Yes. I was afraid to use the equipment at that time.

Q Were you afraid to use the equipment because of any fear that Mr. Talerico would place on you?

A Not really.

Q Did you shortly leave the office?

A After that, yes.

Q And when you left that office were you in any fear at all, regardless of where it came from?

A No. In fact I had talked of making a trip to get the balance of the money I owed.

Q Let me ask you specifically Mr. Sackman, when you left that office, were you in any fear as a result of any actions on the part of Mr. Talerico, that he might have against you?

A That he might have against me?

Q Yes.

A I don't think so.

Q As a matter of fact up to this point you were never in fear of Mr. Talerico; is that true?

A Not really.

Q And at this time he was still your friend, wasn't he?

A I would say so.

Q Would you consider him at that time a better friend than Mr. King?

A A better friend than Mr. King? Yes, if you make a comparison, but I don't care for any of them actually because they attempted to harm me.

MR. MANGANELLI: Your Honor, I ask that that remark be stricken.

THE COURT: Yes. Strike it out. Don't volunteer.

THE WITNESS: He asked me for an answer and a comparison.

BY MR. MANGANELLI:

Q All right Mr. Sackman, isn't it a fact that following the 13th of November, you did not meet or talk with Jim Talerico until the 30th of November, at which time that was a telephone conversation which was recorded?

A I believe that is the fact, but I am not sure.

Q Is it your best recollection, sir, that that is a correct statement?

A I am not sure. I may have seen him in between that time.

Q What is your best recollection, and we are talking about from the 13th until the 30th?

A I believe we were together on a couple of occasions between then, but I am not sure of that. Perhaps the F.B.I. can give you that information.

Q Yes. Perhaps they can. But you don't have any clear recollection of that?

A No I don't.

Q So on the 30th of November, do you have a recollection of placing a call to him again?

A Yes.

Q Now didn't you first try to reach him at the restaurant on the 30th, at Geraci's?

A On the 30th of November?

Q Yes.

A I may have called there looking for him.

Q Isn't it a fact, Mr. Sackman, that you first attempted to speak with Mr. Geraci-- with Mr. Talerico by placing a call to Geraci's Restaurant?

A I used to speak with him quite often at Geraci's.

Q That is not my question. On the 30th of November, didn't you first try to contact Mr. Talerico by telephone at Geraci's Restaurant?

A I am not sure.

Q In any event you didn't contact him there, did you?

A No, not to my knowledge, but I am not sure.

Q Did there come a time when you talked to him at his home?

A On November 30th?

Q On November 30th.

A Yes.

Q Then maybe it will refresh your recollection if we can characterize that Thursday afternoon as the time when the weather was bad?

A Yes.

Q Did you call Mr. Talerico at his house?

A Yes.

Q Give me your best recollection when you made this call?

A In the evening. 8:30, 9:00 o'clock.

Q What were the weather conditions in Syracuse? Did you call him from Syracuse?

A Yes I did.

Q Tell the court and jury what the weather conditions were in Syracuse when you called him?

A It was snowing.

Q Would you characterize it as a very bad evening?

A I would say so.

Q When you called Mr. Talerico, isn't it a fact that that was the first subject that was discussed, the weather in Syracuse as well as in Utica?

A It is possible.

Q Didn't he tell you when you called that it was a "bitch out", remember him saying that?

A He may have said that.

Q And isn't it correct, sir, that the purpose of that call was to solicit the aid of Mr. Talerico in getting a message to Mr. King?

A Yes sir.

Q There is no dispute about that, is there?

A No.

Q Didn't he also tell you that it was a terrible night out and he couldn't get any message to him?

A That is correct.

Q And didn't he tell you that he didn't have any telephone number and couldn't call him by phone?

A He couldn't call him by phone.

Q And didn't he say in substance he was not going out that night and deliver any message?

A Right.

Q Then you continued your conversation with him and then didn't he suggest that you could call him the next morning by 12:00 o'clock and, "I am sure that you could reach him at the body shop"?

A Yes.

Q And he told you that if he did see him he would tell him?

A Yes he did.

Q And the thing he was supposed to tell him was that you wanted to see him around 2:00 o'clock in the afternoon because you had to do something else that morning; isn't that right?

A That is correct.

Q Mr. Sackman, didn't you end the conversation on that day by saying, Thanks for your help"?

A I sure did.

Q And that was the sum and substance of that conversation on the 30th?

A Yes.

Q And after the 30th, you did not see Mr. Talerico any more until today; is that right?

A That is correct.

Q Did he at any time, over the extension of this matter, that is from the 18th of September, 1972 until the 1st of December, 1972, the day that Mr. Talerico was arrested, did he ever call you in violence or in any nature whatsoever?

A I would say no.

Q Did he ever strike you or do anything to harm you?

A No.

MR. MANGANELLI: May I have a moment if Your Honor please?

THE COURT: Yes.

BY MR. MANGANELLI:

Q Did you at any time, Mr. Sackman, ever give anything to Mr. Talerico pertaining to this loan to give to anyone else? By that I mean did you ever give him any money?

A No.

Q To your knowledge, Mr. Sackman, did Mr. Talerico ever receive any proceeds from the money that you gave Mr. King on that day?

A I have no knowledge of that.

Q From your knowledge you don't know?

A I have no knowledge of that.

Q And now Mr. Sackman, I forgot to ask you this. Let's go back for a moment please to the time when you were in the car with Mr. Talerico on your way to Schenectady, which was the time that you said you told him about the loan?

A I said I believed that was the first time.

Q Based on your recollection, that is what you testified to; is that correct?

A Yes.

Q Did you at that time spell out the terms concerning the interest to him?

A Yes.

Q Is it your recollection that you spelled out the terms on that day?

A I believe so.

Q I ask you to be very careful because this is important. Do you know for certain that you told Jim Talerico on that day the matters pertaining to the interest that was expected of you?

A Yes I did.

Q That is your best recollection?

A Yes.

MR. MANGANELLI: I have no further

questions Your Honor. Thank you.

MR. SCHOLL: With the court's permission.

CROSS-EXAMINATION (continuing)

BY MR. SCHOLL:

Q Mr. Sackman, on October 30th, 1972, at about 8:00 P.M., in the Howard Johnson's parking lot in Utica, New York, was it light or dark?

A Dark.

Q It was dark?

A Yes sir.

Q You were seated in a car at that time?

A Yes sir.

Q In which you alleged Mr. Zogby was seated also; is that right?

A Yes sir.

Q Had you ever seen Mr. Zogby prior to October 30th, 1972?

A No.

Q As a matter of fact after October 30, 1972, you identified Mr. Zogby through the use of photographs which were in the possession of the F.B.I., did you not?

A Yes sir.

Q When was that?

A Several days after that. I don t know the exact date.

Q Was it more than a week?

A I don't know. I would say it was approximately seven days.

Q About seven days?

A Approximately.

Q Taking you somewheres around November 6 or 7?

A I am not sure.

Q Somewhere along there; is that right?

A I am not sure of the exact date.

Q And you had made a positive identification of Mr. Zogby by the use of those photographs?

A I sure did.

Q Did you have a conversation with Mr. James Talerico at Geraci's Restaurant on November 11, 1972?

A Yes I did.

Q And during the course of that conversation did you talk about two guys from Buffalo?

A Yes I did.

Q And did you say, "I don't know who they are ?

A Yes I did.

Q And did you describe those two guys?

A Yes I did.

Q And did you describe one of them as "one guy with dark hair and a big nose, sort of 30, 35"?

A I probably did, yes sir.

Q Did you finish that statement by saying, "Do you know who they are?"

A Yes I did.

Q You knew who they were, didn't you?

A No, I knew who one was.

Q But you asked who they were?

A That is correct.

Q Was there some doubt in your mind as to who they were?

A There was doubt as to who one was, not the other.

Q And yet you asked who both were?

A Yes.

Q How did you know they were from Buffalo?

A I just believed them to be from Buffalo. I didn't know where they were from.

Q You just threw in the word "Buffalo"?

A Yes.

Q Is that what the Federal Bureau of Investigation said to you that that is where those men were from?

A Absolutely not.

Q And now how long were you in the presence of Mr. Zogby on October 30th?

A I believe I said it was approximately ten or fifteen minutes.

Q Do you recall your conversation-- I will withdraw that. Do you recall these questions being put to you and giving these answers in your testimony before the grand jury:

"Q Could you describe his height?

A He was sitting in a car and I only saw him for a moment. I would say 5 - 10 or maybe 5 - 9".

Is that the answer you gave?

A Yes.

Q You only saw him for a moment; is that correct?

A I said a moment. It was about ten minutes, perhaps fifteen. I was very nervous before the grand jury.

MR. SCHOLL: Your Honor, the witness is volunteering information not in answer to my question.

THE COURT: Strike it out.

BY MR. SCHOLL:

Q Did you tell the grand jury what kind of a car Mr. Zogby was allegedly driving that evening?

A I told them what I thought the kind of car was.

Q What did you tell them the kind of a car it was?

A I believe it was a Chevrolet.

Q And that appears in your testimony before the grand jury?

A I don't know for sure what appears in that testimony before the grand jury.

Q But you are telling me that is what you did tell the jury?

A I don't recall what I told the grand jury for sure in that relation.

Q Were you told, Mr. Sackman, as a matter of fact prior to your testifying before the grand jury, what kind of a car Jack Zogby owned?

A I described that car to the F.B.I. You will find it in their report, and that was prior to the grand jury.

Q Did the other gentleman who allegedly accompanied Mr. Zogby point a gun in your face?

A Yes he did.

Q Do you recall this question being asked of you and giving this answer, in your testimony before the grand jury:

> "Now Mr. King, Mr. Zogby and this unidentified white male met with you on the 30th in Utica. Could you describe briefly what took place? Was this loan discussed at the meeting?
>
> Answer - Very definitely. The unidentified man in the back seat drew a gun and put it to my back. I was in the front seat facing backwards, and he told me the loan had to be paid, and I was late in making the payment now. He said it had to be paid right away, and I told him I couldn't pay it right away, so I asked for some additional time, and he turned to Mr. King and asked if it

> was alright with him, and Mr. King gave me more time."

Was that the answer that you gave to the grand jury?

A Yes.

Q Before viewing the photographs which were in the possession of the Federal Bureau of Investigation, did you describe the two suspects that you had in your mind to the F.B.I?

A Yes.

Q Did you give a description of one of them as being a man with a pock-marked face, has dark hair, wavy hair?

A I said possibly pock-marked face.

Q Possibly pock-marked face?

A Yes.

Q Would you describe Mr. Zogby as having a pock-marked face?

A In the back of the car it looked like he had.

Q Does it look like he has a pock-marked face today?

A Yes, to me it looks pock-marked.

Q Did you identify this man as being between 30 and 40 years of age to the F.B.I?

A That is what I figured his age, yes.

Q And in your conversation you identified him to Mr. Talerico as being 30 or 35?

A I think so.

Q Do you now know that he was born in 1925, making him 48 years of age?

A You told me about that.

Q And Mr. Sackman, Mr. Zogby had nothing to do, as far as you know, with the loaning of this money to you; is that correct? The actual loan itself?

A I would characterize him as an enforcer.

Q He didn't hand you any money?

A No.

Q Didn't make any arrangements?

A No.

MR. SCHOLL: Your Honor, I would like to move to strike the previous answer.

THE COURT: No. I think your question prompted just that answer, the way you put it. As I have been trying to tell all of you is on cross-examination you can't ask leading questions. You ask wide open questions and get wide open answers.

BY MR. SCHOLL:

Q Mr. Zogby did not hand you any money?

A No.

Q Did he make arrangements for you to receive any money?

A No.

Q You have never seen him prior to October 30, '72; is that correct?

A Yes, that is correct.

Q Have you ever seen him since October 30, 1972?

A No.

Q So yesterday was the first time you had seen him after October 30, 1972; is that correct?

A Other than in the photographs.

Q Other than in the photograph?

A Yes.

MR. SCHOLL: Nothing further.

MR. BRINDISI: Your Honor, may we approach the bench?

THE COURT: Not right now.

CROSS-EXAMINATION (continuing)

BY MR. LONGERETTA:

Q Mr. Sackman, had you ever seen the individual known as Carl Mazza prior to November 18, 1972?

A No.

Q Have you ever made any arrangements with a man by the name of Carl Mazza concerning the loan before November 18, 1972?

A No.

Q Your testimony I believe is that on November 18, 1972, you had an incident sometime in the afternoon at the Howard Johnson Restaurant; is that correct?

A Yes.

Q And you had an interview concerning that incident with Special Investigators Watts and Savage, concerning that interview?

A I think it is Randy.

Q I think it is Savage and Watts. Where did this conversation take place?

A At Nichol's Shopping Center on Route 5, is it?

Q Is that in South Utica?

A Above New Hartford.

Q Above New Hartford?

A Yes.

Q Did there come some conversation between the two of you earlier that day to meet at Nichol's?

A No.

Q This was a pre-arranged meeting?

A No. They heard me on the transmitting unit which was on my body. And I suggested that we go there.

Q You suggested that you meet at Nichol's?

A Yes.

Q What time of the day was this?

A Shortly after, let's see, we met there, it was about ten minutes after the incident took place.

Q And that incident allegedly took place at what time; do you recall?

A I would say approximately 12:45 to 1:00 o'clock.

Q That is P.M?

A P.M., yes sir.

Q And do you know where the special investigators were coming from?

A No.

Q Do you know whether or not they were in the vicinity of your automobile when you made this communication to them?

A About going to Nichol's?

Q Yes.

A They could hear me on the unit while I was driving along, I suggested the Nichol's Shopping Center and we proceeded to the shopping center.

Q You don't know where they were coming from?

A No.

Q When you made this communication to them, were you still at the Howard Johnson parking lot?

A No, I was driving on Genesee Street.

Q Did they indicate that they were behind you?

A I don't recall whether they indicated in the early part. Perhaps later on they may have.

Q Did they indicate to you anything that they observed of your trouble?

A I don't know what they observed.

Q Did they indicate to you that members of the F.B.I., were in the vicinity?

MR. WELCH: Your Honor, that is objected to. It is all hearsay.

THE COURT: I don't see its materiality any way. I sustain the objection.

BY MR. LONGERETTA:

Q Now when you arrived at Howard Johnson's approximately 12:30 that afternoon---

A Approximately.

Q Tell me what happened then after you started entering the driveway?

A I pulled in the driveway, Mr. King was at the telephone booth.

Q Is that an outside booth?

A That was an outside booth, on the left hand side facing Howard Johnson's. I pulled my car directly in a straight line nearest where the road turns and goes to the Country Squire.

Q This is to the rear of Howard [illegible]'s?

A This is to the rear of Howard Johnson's. He motioned for me to come to him. I motioned for him to come to me. He made a motion in the opposite direction from where he was parked, that would be behind Howard Johnson's, and this gentleman came to my car. When I first saw him, he was walking towards the car.

Q And that was from the rear of Howard Johnson's?

A Yes.

Q And that was the individual that you saw?

A Yes, that gentleman with the stripped tie.

Q You didn't know him at that time?

A No.

Q Does he look the same as you observed him here today?

A Yes.

Q Do you recall how you described him to the F.B.I?

A I believe so.

Q Can you give us that description?

A I said he was between 25 and 35 years old. I said he was very heavy. He had pudgy hands and a fairly round face.

Q Do you recall saying to these investigators Watts and Savage, that he was an individual weighing approximately 220 pounds?

A I don't recall whether I gave the weight.

Q In any event, did you know his name at that time?

A No I did not.

Q Then he, I think you said, got into the front seat of the car?

A Correct.

Q And Mr. King got into the back seat of the car?

A Yes.

Q Was there some conversation between you and Mr. Mazza?

A Yes. He asked me how I made out and I told him my relative was not in Herkimer and I didn't have any money, and he proceeded to strike me very hard across this side of the face (indicating), and he knocked me over into the corner wedging myself between the seat and the window.

Q When he said, "how did you make out", you knew what he was referring to?

A Yes.

Q How did you arrive at that?

A I was supposed to be paying the $4,000.00.

Q You were supposed to be paying Mr. Mazza the $4,000.00?

A Yes.

Q How did you arrive at that?

A I assumed he was there to collect the $4,000.00.

Q This is purely an assumption on your part?

A I think it was a truthful assumption under the circumstances.

Q He didn't tell you that he appeared there to collect the $4,000.00; is that correct?

A No he didn't.

Q I believed when you were examined by co-counsel, you indicated at one point from September 18th, until the date of arrest you mentioned to the F.B.I., that you were in fear for your life; is that correct?

A Yes.

Q Can you tell me when you did this?

A I mentioned it several times to them.

Q Was this sometime before November 18th?

A Yes.

Q And was it after October 30th?

A Yes.

Q And did you request some kind of assistance or surveillance by them?

A They were giving me assistance and surveillance.

Q Do you know whether or not your situation on November 18th were surveilled?

A I would assume they had a listening device. I don't know how many were there or who.

Q Do you know who it was by name?

A I don't know by name.

Q Did they advise that you were going to be under surveillance at that time?

A Yes.

Q Would you tell us again, Mr. Sackman, exactly what you responded to Mr. Massa when he said, "how did you make out?"?

A I said that my relative was not in Herkimer.

Q What relative were you referring to?

A A cousin of mine, and that he had come up to Utica; that the man who was watching his business establishment told me he was up in Utica and was not expected back until 5 or 6 o'clock.

Q You said all of this?

A Yes.

Q And then what happened?

A He smacked me across the side of the face.

Q So he didn't do it immediately upon entering the car?

A Well it was a very quick action, and I didn't know what hit me when he smacked me. I was surprised to say the least and when he put a knife to my throat, to cut my throat, I was very very upset.

Q Did you make any movements at that time?

A I don't recall.

Q Was the tape recorder on at that time?

A Yes. I turned it on when I was going across the Thruway Bridge.

Q So you made no suspicious movements to your knowledge?

A No, in no way.

Q Do you know what Mr. Mazza struck you with?

A He struck me with his left hand.

Q With his left hand?

A Yes.

Q Would that have been a backhanded slap against your face?

A No, it was a forehanded slap.

Q Can you tell me how he was seated in the car?

A He was facing this way (indicating) and I am across this way, (indicating) and he knocked me across with that contact and said, "I will kill you".

Q He did both at the same time?

A No.

Q He dropped his hand down and with his other hand did he make application with a knife?

A Yes. I was facing this way. I was up against the window and he put the knife over here (indicating) and his arm was like this (indicating) and he put the knife a second time over here (indicating).

Q And he pulled the knife away voluntarily?

A The second time he pulled the knife away voluntarily.

Q Do you shave every morning, Mr. Sackman?

A Yes.

Q Did you nick yourself that morning?

A I don't believe so, but it is highly probable that by late afternoon any nicks there could be healed.

Q Now your neck would be pushed back against the window of the car?

A Yes.

Q And when the knife was pulled away did you have an opportunity to look at it?

A To look at the knife?

Q Yes.

A Yes.

Q Tell me when you had this opportunity?

A After he pulled it away the second time.

Q You have not seen it before then?

A I saw it coming at me.

Q As he pulled it away what did he do with it?

A He put it back in his pocket I assume. I don t recall what he did with it.

Q Is it safe to presume he closed it? As you said it was a switchknife?

A I was shaking like a leaf.

Q But you were not shaking so that you couldn't give a description of the knife?

A I told you about the knife as I saw it.

Q And you were under surveillance at that time at your request by the F.B.I?

A Yes.

Q And a knife was held at your neck and no one came to your assistance?

A I don't know what they were doing at the time.

Q But in any event, no one came to your assistance?

A I told you I didn't know what they were doing.

Q My question is did anyone come to your assistance at that time?

A No.

Q There came a time when you were called upon to identify Carl Mazza. Can you tell me how that took place?

A I was given a series of photographs to look at.

Q You were given a series of photographs?

A Yes.

Q Where did this take place?

A In Syracuse.

Q And who provided the series of photographs for you?

A Mr. Kolavar of the F.B.I.

MR. LONGERETTA: Your Honor, at this time may I request a hearing to determine whether or not the description given--- I was advised during the bill of particulars that no photographs were used in making the identification.

THE COURT: All right. The jury can be excused for the night. Remember my instructions. Don't talk about the case not even among yourselves or let anybody talk to you about it, or listen to anything about it on the radio or look at anything about it on

T.V., or hear anything about it on T.V. Don't read anything about it in the newspapers.

Have a good night's rest. See you in the morning at 10:00 o'clock. Spectators will be seated until the jury has left.

(Whereupon at 5:13 P.M. o'clock the jury retired from the court room).

MR. BRINDISI: May we approach the bench?

THE COURT: Do you need to now that the jury is out? Can't you speak up?

MR. BRINDISI: I would like to approach the bench.

THE COURT: All right. Can't we let this go until tomorrow morning?

MR. WELCH: My understanding is that two questions will take care of the situation.

THE COURT: It will take care of it just as easy at 9:30. I am returning these three things to you. These should be marked. Mark these--- No, I won't return them to you. I won't mark them until tomorrow.

MR. WELCH: Will Your Honor direct that these be sealed also?

THE COURT: In due course. I am not doing anything now, just keeping them. All these motions will be heard tomorrow morning at 9:30. Have your witnesses here at 9:30.

(Whereupon at this point an adjournment was taken until February 23rd, 1973, at 9:30 o'clock A.M.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

LOUIS CHARLES KING, ALBERT J.
MARRONE, JAMES VINCENT TALERICO,
JACK ZOGBY and CARL J. MAZZA,

Defendants.

72-CR-283

The trial in the above-entitled matter was continued pursuant to adjournment at the United States District Court in and for the Northern District of New York, at Utica, New York, commencing on February 23rd, 1973, before HON. LLOYD F. MAC MAHON, United States District Judge sitting by designation, and a Jury.

* * * * *

MR. LONGERETTA: I presented it in my defense. I told the jury Mr. Mazza was present Your Honor, which is a situation that might not have occurred. The prosecution would be put to their proof and they would have to prove that Mr. Mazza was there. He is not compelled to take the stand.

THE COURT: I am sure he doesn't have to take the stand. I don't see the point of your argument. I am pretty sure the prosecution will prove Mazza was there. They have already, from the testimony of the witness Sackman.

MR. LONGERETTA: May I have an exception to Your Honor's ruling.

MR. BRINDISI: If the Court please, I forgot to remind the court last evening. You recall the witness Sackman testified he kept a notebook on the dates that he met with the defendants, and I would like to have it produced.

THE COURT: Do you have it?

MR. WELCH: It is my recollection that the witness Sackman had indicated that he had some notations on pieces of paper. I have seen much of his record. He keeps copy paper books, little pieces of paper.

THE COURT: All I want is something. He said he wants them produced.

MR. WELCH: He said he might have some notes on pieces of paper.

THE COURT: Has he looked to see?

MR. WELCH: No Your Honor.

THE COURT: What do we have to do here? What do I have to do to get the United States Army to have the United States Attorney's Office do what I tell them to do?

MR. WELCH: May I ask Your Honor's indulgence for one moment to call to the court's attention Mr. Sackman's life is in danger. The United States Marshal's Office has been asked not to go near his house.

THE COURT: My life should be as safe as he is. Go ahead and get the papers. Surround him with 50 million people if you have to. Go get the papers.

MR. WELCH: Do you want them now?

THE COURT: You have all kinds of resources. You have the F.B.I. Have them go and get the papers. It takes about ten times longer to try a case up here than it would anywhere else in the United States. Mainly because of the United States Attorney's Office. This is so in one case right after the other. Bunglers, every time.

MR. BRINDISI: Your Honor, also yesterday I indicated I would like to make a motion in this case under the Fourth and Fifth Amendments. After reviewing the cases last evening, I think it is quite frivilous and therefore withdraw the motion.

THE COURT: Thank you. I am always glad to have you help me even a little bit. All right, let's roll. Bring the jury in. Are you through with Sackman?

MR. LONGERETTA: No Your Honor. I am still on cross-examination.

THE COURT: All right.

THE CLERK: Bring the jury in.

MR. BRINDISI: Will the cross-examination of Mr. Sackman be suspended until those notes are produced?

THE COURT: I would like to have you finish whatever cross-examination you can right now. It may be after you see those things, you won't want them.

MR. BRINDISI: May we also have those papers that we had under the Jenks Act?

THE COURT: Yes. Let the record reflect I am making enough copies of 3509, which the court has indicated be made available, enough copies for all counsel. Also, 3508 and also 3506. Where is 3507?

MR. WELCH: It should be there, sir.

THE COURT: Here is 3507. One page. Let him look at the original, as long as it is one page. I will give you an opportunity to read these before we start proceeding. Let me know when you are ready. We will take a short recess.

(Whereupon at this point a recess was taken and then at 10:45 A.M., the jury was brought into the court room).

THE COURT: Good morning.

THE JURORS: Good morning, Your Honor.

THE COURT: Proceed.

CROSS-EXAMINATION (continuing)

BY MR. LONGERETTA:

Q Mr. Sackman, do you recall yesterday before we adjourned, we were talking about the identification of Carl Mazza that was made by you; do you recall that?

A Yes.

Q Would you tell me again when and how you decided that the perpetrator of the act on November 18th was Carl Mazza?

A You want all the ways I arrived at how it was Carl Mazza?

Q You indicated that a meeting took place on November 30th?

A Yes.

Q Could you tell me what happened at that meeting?

A We were sitting in an office in Syracuse.

Q Who was we?

A I believe Mr. Hodgens, Mr. Kolavar and myself were in the office, and there was somebody else there, who I am not sure, and Mr. Hodgens came into the office and he had a series of photographs in his possession. He was showing the photographs to Mr. Kolavar.

Q At this point did you hear the name mentioned, "Carl Mazza" by anyone?

A I am not sure whether it was at that time or later in the conversation. Some pictures were put down on the desk and I noticed these pictures, when I looked over the desk, as near as I can recollect, and somebody said it was Carl Mazza. I had heard the name "Mazza" in the car from Lou King mentioning it when he was pulling the knife away from my throat.

Q And some two weeks later in Syracuse some photographs were shown and you heard the name Carl Mazza and you made some identification at that time?

A I looked and said, "That is the man."

Q When you heard the name Carl Mazza was when you made the identification from the photographs?

A Correct.

Q Had you identified Carl Mazza at any time between November 18th and that meeting in Syracuse?

A No sir.

Q The only identification was a description you had given to an agent at that time; is that correct?

A Correct, sir.

Q In that description you said he is a man approximately 220 pounds?

A I believe that is what I said.

Q Between 5 foot 10 and 6 feet?

A Yes.

MR. LONGERETTA: May the court permit Mr. Mazza to stand?

THE COURT: Sure.

(At this point the defendant Mazza stood at counsel table).

BY MR. LONGERETTA:

Q A man 220 pounds is your identification?

A That is the way he looked to me at that time.

Q Can you tell us what Mr. Mazza weighs at this time?

A 235, 240.

Q Would it be a closer guess at 280?

A I make it 235, 240.

Q There are certain questions alluded to yesterday by counsel. There came a time when you said you received an alleged loan of $4,000.00, and at that time you took the money home, took the money out of the envelop that it was contained in, you marked the serial numbers on that envelop and turned that envelop over to the F.B.I.; is that correct?

A Yes sir.

Q What did you do with the money?

A I paid off personal bills I had or obligations.

Q Did you not testify that this money was to be front money for some Panama deal that was going on?

A No I didn't.

Q Did you relate this to Investigator Kolavar that the $4,000.00 was the advance amount for a Panama deal?

A I think we discussed that this $4,000.00 was front money to go to Panama and back.

Q Did you offer to turn the money over to the F.B.I?

A No.

Q You didn't even offer?

A No sir.

Q Did they ask for it from you?

A No sir.

Q You just gave them the envelop and they were satisfied with that?

A Yes sir.

Q Did you ever pay the money back to anyone from the date you received it?

A I paid back $350.00 in interest.

Q Then there is $3,650.00 left?

A No, there is also the interest.

Q So the money was still used for your benefit; is that correct?

A Yes sir.

Q Mr. Sackman, have you ever been convicted of a crime?

A No sir.

Q Another item that seems to have alluded me yesterday, I believe you testified at one point that you were offered surveillance and protection by the F.B.I?

A At one point?

Q Yes. I don't recall the date. What date was that?

A I don't recall the exact date myself.

Q Was it prior to the November 11 meeting?

A Yes. I think there were times prior to the November 11 meeting.

Q Was it prior to the October 30th meeting?

A Yes, it was prior to the October 30th meeting.

Q And did you refuse it on occasions?

A I did.

Q Prior to October 30th, were you offered protection where you accepted it?

A I don't recall, no.

Q The incident occurred on October 30th; is that correct?

A Yes sir.

Q And it was your testimony that this incident occurred at a meeting between you and Mr. King when you went to meet representatives of whoever made the loan to you?

A Correct.

Q You did meet with those representatives?

A Yes I did.

Q And this was where?

A At the side of the Howard Johnson's.

Q Here in Utica?

A The right side of Mr. King's automobile.

Q Here in Utica?

A Here in Utica.

Q And that was on October 30th, 1972?

A Yes sir.

Q And there were two other individuals in the car at this time?

A Yes.

Q Was this the time that you testified a gun and knife were put to your back and neck?

A Various places. My face, my back and neck.

Q On this particular day you did not have the surveillance and protection?

A To my knowledge there was no surveillance and protection there.

Q Did you report this incident to the F.B.I?

A Yes I did, I did.

Q When?

A Within the next 24 to 48 hours. I don't remember the exact time.

Q This incident took place in the evening?

A Yes.

Q Was it dark at that time?

A There was a light from the place where we parked.

Q But not inside the car?

A You can see quite well inside the car. It comes through the windows.

Q Was a light on in the car?

A There was no light in the car, no sir.

Q You left that area and where did you go?

A Home.

Q Directly home to Syracuse?

A Yes sir.

Q Did you go to sleep that night?

A I didn't sleep too well.

Q Did you go to bed?

A Yes.

Q Or did you report in that evening?

A I don't recall when I did report it.

Q Did you go to them directly after the incident in the Howard Johnson's lot?

A I don't believe so.

Q You said you went home?

A Yes.

Q And you went to bed?

A I think I went to bed later in the evening.

Q But you did not report to them prior to going to bed?

A I don't recall.

Q Do you know whether or not you reported to them the next morning?

A I told you I think I reported approximately within 24 hours after the incident.

Q Or any time after 8:00 o'clock the next evening?

A Yes.

Q And who did you report to?

A Mr. Kolavar.

Q Did you ask him at that time for protection and surveillance?

A I don't believe so.

Q You did not. Were you in fear for your life?

A I sure was.

Q And you didn't ask for protection and surveillance?

A No, because they had given me time to gather the money and pay it back.

Q I think you said this all took place in the month of October, and you refused surveillance because you thought you could get the money and pay it back?

A That is correct.

Q And now a threat was made on your life and yet you didn't ask for protection and surveillance?

A I don't recall.

Q Did Mr. Kolavar offer you protection and surveillance after October 30th?

A I believe he did, yes sir.

Q Do you recall whether you accepted?

A On occasion I accepted and on occasion I refused.

Q On what occasions did you accept it?

A When I was having certain meetings with them in relation to the loan.

Q And on other occasions when you didn't have meetings, you didn't want it?

A That is correct.

Q So this was on your say so?

A I believe so.

Q Where you could call them and say, I have a meeting, protect me, surveil me?

A I called them on occasion, yes.

Q And did they do it?

A When I asked, they were there.

Q When was the first time after October 30th, that you did this?

A Probably the day before November 11th. There were meetings when I didn't know if I was covered or not and there were many meetings where I may have been covered by the F.B.I., but I didn't know they were there.

Q My question was when did you first request it after October 30th?

A I don't recall the exact time. There were times when they were covering me and I didn't know they were there.

Q How did you know this?

A I assumed that they were covering me.

Q I am asking whether you knew of this?

A I couldn't say for sure.

Q You said you met with the defendants almost every other day?

A Quite often.

Q Is that your testimony?

A Quite often, yes sir.

Q Did you request surveillance and protection every other day from the F.B.I?

A I didn't make a formal request. It was an on-going investigation at the time, and I think they were covering me at their discretion.

Q You assumed though that they were exercising their discretion?

A No, I trusted them.

Q You were threatened with a gun and a knife and you were threatened with being a dead man, and you didn't ask for help?

A They were helping me all the time.

Q Did you check with them all the time?

A Yes I did.

Q How often?

A Quite often I checked with them.

Q Every day?

A I don't recall the times, sir.

Q You talked with them every day?

A You will have to check their reports.

Q You met with Louis King and perhaps some of the other defendants every other day, was your testimony?

A I said quite often.

Q Did you check with the F.B.I., every other day to see whether you were given protection?

A Every day I met I made a report to somebody.

Q In that report did you ask whether or not you were given surveillance and protection?

A I felt they were with me all the time. I don't know what dates they were with me, but I knew they were with me, they were helping me. It is their job.

Q And yet when you asked for $4,000.00, they wouldn't give it to you, and they were interested in helping you protect your life?

A I believe so.

Q Have you any idea how much money the F.B.I., spends to prevent many kinds of counterfeiting and so forth? Millions of dollars?

MR. WELCH: Objection Your Honor.

THE COURT: Sustained.

BY MR. LONGERETTA:

Q Your next meeting after October 30th with the co-defendants I believe you said was every other day?

A I said quite often.

Q But the next meeting where you were recording was November 11th; is that correct?

A Yes.

Q Did you have surveillance and protection on that day?

A I thought I had protection and surveillance on that day.

Q Did you request surveillance and protection on that day?

A Frankly after the incident with the two men in the car, I think it is a safe assumption that they were giving me protection and surveillance on that day.

Q On November 18th a knife was put to your neck; is that your testimony?

A Yes.

Q Did you scream for help?

A I don't recall screaming for help.

Q You cried for mercy?

A Yes.

Q Oh come now Mr. Sackman, remember everything you said was recorded and put on transcripts. Did you cry for mercy?

A Yes, to Mr. Mazza and Mr. King.

Q You cried for mercy?

A Yes.

Q The evidence will show that if you did so. Do you know who was surveilling you and protecting you at this time?

A Agents of the F.B.I.

Q Do you know what agents?

A Yes, sure.

Q Had you talked with those agents prior to the meeting on November 18th?

A Yes, with some.

Q Who, where and when?

A On November 18th, Mr. Hodgens, Mr. Kolavar, possibly Mr. Savage, but I am not sure.

Q And where?

A At the F.B.I. Office on Genesee Street in Syracuse.

Q At what time?

A In the morning.

Q Is this when they put all the gadgets on your body?

A Yes.

Q And there was just one continuing operation?

A Yes.

Q And there was one that you had to turn off and on?

A Yes.

Q So in any event, they were always going to hear what was going on?

A Yes.

Q Say you have a meeting with a representative or someone, what would you do, go to the F.B.I?

A Go to the F.B.I.

Q The last meeting you had with representatives was on October 30th?

A No, I met with them frequently.

Q You met with representatives frequently?

A Of the F.B.I.

Q I don't mean the F.B.I.

A That is what I thought you said.

Q The representatives of the person who allegedly made the loan?

A No, I met Mr. King.

Q Between October 30th?

A Yes, I met with Mr. King and Mr. Talerico during that time.

Q You considered them representatives of those who made the loan?

A Absolutely.

Q On October 30th you had a meeting with representatives concerning the loan because you wanted an extension of time?

A Yes.

Q And at that time definite threats were made against your life?

A Yes.

Q And this put you in fear of bodily harm?

A Yes.

Q Then you went through a series of meetings between October 30th and November 18th, when apparently you were not concerned with threats on your life?

A I was concerned with threats all during that time.

Q And you asked for another meeting or were told the representatives wanted to meet with you on November 18th?

A Yes.

Q And the representatives wanted to meet with you concerning payment of the loan?

A I believe Mr. King said he was sending somebody to meet with me, yes.

Q You didn't know who that was though?

A Yes.

Q You just assumed it was concerning payment of the loan?

A Yes.

Q And this you just assumed. Could it have been some other loan?

A No. I didn't have any other payment to make to these people.

Q You owed money to other people at that time who wanted to see you?

A Not that Mr. King would know about.

Q So you knew before you entered this meeting on November 18th, that you were meeting a representative for payment of the loan?

A Yes.

Q And it was at such meeting at such a similar nature that you were threatened with a gun and a knife, and this put you in fear of bodily harm?

A Yes sir.

Q Did you ask for surveillance and protection prior to going to the meeting on November 18th?

A I don't recall.

Q You met with Mr. King earlier that morning; is that correct?

A Yes.

Q And you discussed this fact that you were going to meet an individual sometime in the afternoon; is that correct?

A Yes.

THE COURT: Don't you think we have been over this quite enough?

MR. LONGERETTA: Not on this point.

BY MR. LONGERETTA:

Q Did you meet Mr. King with that man?

A Yes.

Q You discussed the fact that someone wanted to see you in the evening?

A Yes.

Q And a period of time elapsed between that meeting and 12:30?

A Yes.

Q Did you contact the F.B.I., during those two hours?

A I was in contact at that time, yes.

Q Did you ask them for protection?

A I assumed they were protecting me the whole day.

Q Mr. Sackman, did you ask them for protection?

MR. WELCH: Objection Your Honor.

THE WITNESS: I don't understand that Your Honor. I am sorry.

BY MR. LONGERETTA:

Q Very simply, did you say, "Please protect me"?

A Did I say, "Please protect me"?

THE COURT: Just a minute. Sustained. It is repititous ad nauseum.

BY MR. LONGERETTA:

Q Do you know whether anyone was in the environs of Howard Johnson's at the meeting at 12:30, for your surveillance and protection?

A Yes.

Q You do know this for a fact?

A I would have to assume so.

Q Don't assume.

A Yes I know so.

Q Who was there?

A F.B.I. Agents.

THE COURT: Let's get onto another record.

BY MR. LONGERETTA:

Q Then this other incident occurred where a knife was put to your neck so you say?

A Yes.

Q After the incident had terminated and Mr. Mazza, as you say, and Mr. King had left your vehicle, did you comment to someone if they had observed what had occurred?

A I don't recall.

Q You don't recall. Did you ask anyone why they had not come to help you when they saw you in a dangerous situation?

A No sir, I don't believe so.

Q You don't believe so. You recall what you said after that?

A I believe I drove out of the lot quite shaken, and I said to whoever was listening to me on the transmitter, I was going to go to the Nichol's Parking Lot.

Q Did you say you were quite shaken?

A No, I think they could tell from my voice.

Q But you said you were going to Howard Johnson's?

A No, I said I was going to Nichol's.

Q Do you know Mrs. Elizabeth Marrone, Mr. Sackman?

A No.

Q As a further identification, she is the wife of Albert Marrone?

A I do not know that.

Q You had never met her?

A No.

Q Do you know her situation?

A No.

Q Do you know she is a mother with a child?

A I don't know anything about the lady, sir.

Q Were you ever given any information about her by anyone?

A I don't think so.

Q Then of course you wouldn't be aware that she was operating a store?

MR. WELCH: Objection.

THE COURT: Sustained. Counsel's questions, of course, aren't evidence of anything.

MR. LONGERETTA: Just a couple of more questions.

BY MR. LONGERETTA:

Q When you indicated that you were struck by Mr. Mazza in the vehicle, you said your head was ringing?

A After I pulled out my head was ringing.

Q And Mr. Mazza apparently grabbed you around the neck?

A I didn't say that.

Q Well he struck you; is that correct?

A Yes.

Q Is that the first thing that happened?

A That is the first thing that happened.

Q And he pushed you back against the door?

A Yes.

Q And your head was ringing?

A No, it was ringing afterwards. I do remember Mazza taking a knife and sticking it to my neck.

Q Were you stunned when he struck you?

A Yes, it hurt me for a moment, yes.

Q Were your eyes all bleary, shook up?

A I was shook up, yes.

Q And were you a little faint?

A No.

Q Your head was leaning against the car door as you testified?

A I don't think my eyes were bleary, but I was leaning against the car door.

Q You say you were stunned and yet you say you saw a knife?

A Yes.

Q Sufficiently enough so that you could identify it?

A I said I thought it looked like the same knife that was used by Mr. Zogby.

Q Even though you were struck by a blow?

A Yes sir.

MR. LONGERETTA: That is all.

THE COURT: Any further cross-examination?

MR. BRINDISI: I have a few questions, Your Honor.

Your Honor I would like to have the United States Government advise me as to who S.A.C. 137-2652 is, for purposes of cross-examining this witness.

MR. WELCH: For the record, it is my understanding that those numbers designate Mr. Sackman.

MR. BRINDISI: Just one further question of the United States Attorney's Office. I would like to know who the report was made to?

THE COURT: Mr. Brindisi, you should have done this when we went into these this morning.

MR. WELCH: I am unable to say who the report was made to.

THE COURT: You have to get the original which, of course, is sealed now. The jury may take a recess. You will have to get the original.

MR. WELCH: It is my understanding that

this is a report by Special Agent Kolavar to the Special Agent In Charge of the Albany Office.

THE COURT: Does that satisfy you?

MR. BRINDISI: I think that satisfies me.

THE COURT: All right, get them back. No, we will take a five minute break.

(Whereupon at this point a short recess was taken after which court was reconvened).

THE COURT: All right.

MR. BRINDISI: If the court please.

CROSS-EXAMINATION (continuing)

BY MR. BRINDISI:

Q Mr. Sackman, yesterday on the stand you broke down and cried after discussing a certain incident. What date did that take place?

A I don't know what incident you are referring to.

Q You said something about somebody going to Syracuse, that you were worried about your family being in danger.

A I don't know which date you are talking about.

Q You recall a conversation you had with Mr. King and you testified that you were worried about certain people going to Syracuse, New York and endangering your family?

A Yes.

Q And you volunteered the information that your wife was sickly?

A Yes.

Q You recall having a conversation with Mr. King on November 16, 1972?

A Yes.

Q Do you recall in that conversation that you were the one that mentioned about not having anyone come to your house?

A Correct.

Q You recall that. And you initiated that portion of that conversation?

A That portion of that conversation, correct.

Q You also recalled in that same conversation Mr. King saying to you, "And I told you don't ever get involved with them, I told you that day don't take this money. I told you that." Do you recall Mr. King saying that to you on November 16, 1972?

A Yes sir.

Q Now you also recall making a report to F.B.I. Agent Robert Kolavar on November 13, 1972, when you indicated that Mr. King told you that the only money that these people wanted was the $4,000.00; that there was no interest?

A I don't believe he said there was no interest. He said they would wait on the juice for a later date.

Q Did you make a statement to F.B.I. Agent Robert J. Kolavar on November 16, 1972, that you tried to convince King that it was impossible for you to raise $4,000.00 by November 18, 1972, and to that King replied, "They want the $4,000.00. Don't worry about the vig. Just return the $4,000.00. They don't want to deal with you. They only want their money." You recall making that statement to Mr. Kolavar on November 13, 1972?

A I don't recall the exact statement to Mr. Kolavar.

THE COURT: Is that the substance of what you told him?

THE WITNESS: I don't know what Mr. Kolavar wrote on his report. I remember telling him---

Q Just answer my question. Is that what you told Mr. Kolavar?

A I believe he---

Q Yes or no?

A I don't know.

Q When did you first have the F.B.I., conduct a surveillance at your home in Syracuse, New York? When were they there full time?

A Full time?

Q Yes. Full time.

A Twenty-four hours a day. November 30th was twenty-four hours a day. Before that I don't know what the surveillance was.

Q So from November 30th on, they were there twenty-four hours a day?

A Correct, until the U. S. Marshals came.

Q And I understand that you are still being protected by the U. S. Marshals when you come in and out of the court room?

A Right. And they are also guarding my family.

Q Have you worked at all since the incident of December 1st 1972?

A No sir.

Q Has the Government been paying you from that time?

A They are paying me a subsistence allowance now, until I am able to work.

Q I think you testified yesterday that you were only getting travel expenses, I asked you yesterday, from the Government?

A You said the F.B.I.

MR. BRINDISI: I think we can have the record re-read.

THE COURT: Put your question.

MR. BRINDISI: I am trying to put my

question.

Q Did you tell me yesterday the only money you were receiving from the Government was traveling expenses?

A I believe I said no.

Q Your testimony today is that you are now getting subsistence from the United States Government; is that correct?

A Yes sir.

Q How much would that be?

A Per week?

Q Yes.

A Approximately $250.00.

Q So the Government is paying you $250.00 a week for being in Court; is that correct?

A No sir.

MR. WELCH: Objection Your Honor.

THE COURT: Sustained.

BY MR. BRINDISI:

Q Now prior to the meeting of November 18, 1972, is it my understanding that there was surveillance at your house in Syracuse, New York by the F.B.I?

A I don t know.

Q Did you testify earlier at a hearing about your discussing this matter with the F.B.I., that they conducted a surveillance at your residence prior to the incident of November 18, 1972?

A I don't know.

Q Did you testify that before November 18, 1972, you arranged with the F.B.I., to have surveillance for your protection?

A Yes.

Q And you were also offered, I believe your testimony was, protection prior to November 18, 1972; is that correct, sir?

A Yes.

Q And I believe your testimony also was that you felt that at all times you were being protected by the F.B.I.; is that true? Yes or no?

A Yes, I would say at all times I was protected by the F.B.I.

Q And now did Al Marrone know your need for financial assistance prior to the time the money was given to you?

A I believe he did.

Q And when he gave you the $4,000.00, did he tell you that you could repay the money after the Panama deal?

A That Panama deal was covered---

Q Just yes or no?

A Yes.

Q Did you tell Special Agent Kolavar on September 25, 1972, that Marrone told you that he would give you the $4,000.00, which money could be repaid after the Panama deal was consummated on September 27, 1972? Did you tell that to Mr. Kolavar?

A I don't recall the dates being given as you gave them.

THE COURT: Mr. Brindisi, would you come up please.

MR. BRINDISI: Yes sir.

THE COURT: All counsel come up.

(The following discussion took place at the side bar outside the hearing of the jury).

THE COURT: I just want to warn you, you are opening the door to narcotics transactions. Do you want to go ahead on it?

MR. BRINDISI: I believe he brought it out to some extent.

THE COURT: That is your privilege, but you are assuming the risk.

MR. BRINDISI: I know.

THE COURT: Go on.

MR. BRINDISI: Thank you.

(The following took place before the jury in open court).

BY MR. BRINDISI:

Q Now you testified that this money was given to you by Lou King and Al Marrone on September 18, 1972; is that correct?

A Yes.

Q What day was September 18, 1972? What day of the week was it, do you recall?

A Monday, I believe.

Q On a Monday?

A That's right.

Q You are sure that the money was not given to you by Mr. Marrone on Tuesday, September 18th, 1972?

A In fact it was Yom Kippa, and I should not be down in Utica. We were not supposed to drive.

Q According to your religious custom, is it my understanding that you are not to leave the house on Yom Kippa?

A That is correct.

Q You disregarded your religious custom and left the house to accompany Al Marrone and Lou King; is that correct?

A That's right. I desperately needed the money.

Q You desperately needed the money. You at no time during the meeting attempted to refuse that money that was going to be loaned to you?

A No.

Q Then did you tell Special Agent Kolavar on September 25, 1972, that you met Marrone Tuesday evening, September 19, 1972, at which time Marrone had given to you $4,000.00. Did you tell him that, Mr. Sackman?

A I don't know.

Q Are you denying under oath that you told him that on September 25, 1972?

A I don't know what I told him.

Q If you did tell him that would that be a lie?

A I don't know.

Q You don't know?

A I don't know what I told him at that time, sir.

Q I see.

A You will have to ask him. He wrote the report.

Q We will. Did you also tell him at that time that you attempted to refuse the loan but was pressured into taking it and that you were concerned that they would suspect you were receiving outside assistance if you did not take the loan? Did you tell that to F.B.I. Agent Kolavar on September 25, 1972; yes or no?

A I don't recall saying it that way, no.

Q Did you attempt to refuse the loan; yes or no?

A No.

Q Did you get the money from Marrone on Tuesday, September 19, 1972; yes or no?

A No.

Q Did you tell F.B.I. Agent Kolavar that you were worried they might think you were receiving outside assistance, on September 25, 1972?

A I don't recall the conversation.

Q Were you getting outside assistance from the F.B.I., on September 25, 1972?

A I was reimbursed for travel expense.

Q And that is all?

A That is all.

Q You indicated that you were working as an insurance agent making $250.00 to $300.00 a week? You recall that?

A Yes.

Q Were you working as an insurance agent during the month of August, September, October, November, December 1972?

A Somewhat yes.

Q Were you earning $250.00 a week during that period of time; yes or no?

A No.

Q During that period of time I believe your testimony was that you were continuously down to Utica and Syracuse, not only to discuss the case with the defendants but also with the F.B.I?

A Yes.

Q So you weren't receiving that other money from your business during that period of time?

A Yes.

Q And your testimony is that you were not receiving any assistance from the F.B.I., or governmental agency to assist you while you were an informer for the F.B.I? Is that your testimony, yes or no?

A Only as I told you. How can I answer yes or no? I received some.

THE COURT: You can answer it that way. Reframe your question.

BY MR. BRINDISI:

Q I will. Other than this getting traveling expenses, did you receive any other monies from the F.B.I?

A No.

Q During these periods of time?

A Absolutely not.

Q And you were not working during that period of time at least on a full time basis, in your business?

A That's right.

Q How many hours a day would you say you were spending talking to the defendants and going back to Syracuse and talking to the F.B.I?

A Many hours of many days.

Q Was that consuming most of the day time operations while you were doing this?

A Days and evenings.

Q And you are telling us between the times you were spending with the F.B.I., and the defendants, you were conducting your own business for the purpose of obtaining financial assistance for your needs?

A That is correct.

MR. BRINDISI: Thank you very much.

THE COURT: Any further cross-examination?

MR. BRINDISI: Not, sir, from me.

THE COURT: Any redirects?

MR. WELCH: Just a few questions Your Honor.

REDIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Sackman, directing your attention to October 30, 1972, when you met with a man you identified in this court as Mr. Zogby, could you describe to the ladies and gentlemen of the jury the lighting conditions at the Howard Johnson parking lot when you saw Mr. Zogby?

A The car was parked underneath a pole which had a light on it and there was very very sufficient light in the front of the car and in the back of the car coming through the windows of Mr. King's Oldsmobile.

Q How long were you in Mr. Zogby's presence?

A Approximately ten minutes.

Q And how far away was his face during that ten minutes?

A No more than two feet. Three feet at the most.

Q Is there any doubt in your mind at this time that Mr. Zogby was the one who threatened you with the knife?

A None whatsoever.

Q I would like to direct your attention to November 18, 1972, at the Howard Johnson Parking Lot when you testified that Mr. Mazza, the man you identified here, was in the car with you. How long was Mr. Mazza with you in that car?

A Approximately ten minutes.

Q Was it day or night?

A It was daylight. It was during the noon hour.

Q Was it overcast or sunny?

A It was a nice day. I don't recall the sun being there, but it was a nice day.

Q How close was Mr. Mazza's face to you?

A Less than a foot.

Q Is there any doubt in your mind at this time that that man is the man who put the knife to your neck and hit you in the head?

A No doubt whatsoever.

Q And now Mr. Sackman it is true that you testified before the Federal Grand Jury; is that correct?

A Yes sir.

Q When describing the incident involving Mr. Zogby, did you say that you had seen him for a moment?

A I probably did. I was quite nervous.

Q And did you say here that you saw him for at least ten minutes?

A Yes sir.

Q At this time to your best recollection, how long was it?

A Ten minutes.

Q There was no doubt in your mind about that?

A No sir.

Q At that same grand jury when you described the blonde man, do you recall saying that he put a gun in your back?

A Yes.

Q Did he put a gun in your back?

A Part of the time.

Q Can you explain what you mean?

A When I first was talking to him, I was facing him this way (indicating) in the back of the car, and then I shifted around this way (indicating) and the gun was facing my back at this time. That is when the knife was put to my neck, and I turned around when Mr. Zogby said to me, "I am very good with the knife."

Q On September 18, Mr. Sackman, did you have any fear of Mr. King?

A Yes.

Q If you did not repay the loan?

A Yes.

Q On each of the meetings at which you testified here, did you have any fear of Mr. King if you did not repay the loan?

A Yes.

Q Now directing your attention to November 11, 1972, you testified that you recorded a telephone conversation. You testified that you wore a body recorder in the meeting with Mr. King. You testified that you wore a body recorder which was off, as well as a transmitter which was on, when you were with Mr. Talerico at Geraci's Restaurant; is that correct?

A Yes sir.

Q Since November 11, 1972, have you heard the tape recording of your conversation with Mr. Talerico at Geraci's?

A Yes sir.

Q Is that tape recording that you heard accurate?

A Yes sir.

Q In this testimony you have also testified concerning seven different tape recorded conversations. Have you heard each one of these tape recorded conversations?

A Yes sir.

Q To your knowledge is each one of those tape recorded conversations accurate reproductions of what was said in those conversations?

A Absolutely.

Q Mr. Sackman, you testified on cross-examination, and I believe on direct examination, about certain terms. One was vig. Do you know what that term means?

A I associate the word "vig" with interest.

Q You ever hear the term vigorish?

A Yes.

Q You know what that means?

A The same thing to me.

Q What did shylock mean to you?

A A person who loans money at exorbitant interest rates.

Q What does the term "juice" mean?

A I think that is a synonym for interest payment.

MR. WELCH: I have no further questions of this witness, Your Honor.

MR. BRINDISI: May I have one more question, Your Honor? I am sorry I didn't bring it out before.

THE COURT: Yes.

RECROSS-EXAMINATION

BY MR. BRINDISI:

Q Did you tell Special Agent Kolavar that only Al Marrone consented to loan you $4,000.00 at that time on September

9th, 1972; yes or no?

A Maybe. I am not sure. I would say yes, probably. I am not sure.

MR. MANGANELLI: Nothing further.

MR. SCHOLL: Nothing.

MR. LONGERETTA: Nothing further.

MR. BRINDISI: Nothing further, subject to the documents being produced.

THE COURT: Yes. I am aware of that. You are excused for the time being. Subject to recall.

THE WITNESS: Thank you.

(Witness excused).

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